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HISTORICAL SIGNIFICANCE OF THE TERM "CABINET" IN ENGLAND AND THE UNITED STATES[1]

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The institution which is today termed the president's *cabinet* was, in its origin, a creation of George Washington. It grew out of the need of a vigorous, well organized and well directed central administration which should somehow be closely associated and unified under an executive chief magistrate.

Even before the close of the Revolutionary War there were signs that men desired to see the continental government in the guidance of a capable and trusted chief. There were occasional suggestions, too,—among which Pelatiah Webster's is quite the best known[2]—that a committee or board of administrative officials not too strictly hampered by congress, might aid the chief executive as counsellors. Though ready after a brief discussion to establish a single executive magistrate at the head of the projected government, the convention of 1787 seems to have balked at Gouverneur Morris's crude plan for a president's council. The convention yielded, however, to the president the right to require from the principal officers their opinions

[1] In the *Yale Review* for August, 1906 (xv, 160–194) I set forth the history of the beginnings of the president's cabinet council. In the present article I give some account of the term *cabinet* with reference to its historical application to the English committee so called, as well as to its adoption in popular usage in the United States late in the eighteenth century. This may be reckoned as the second among a number of articles which I propose finally to combine in a work to be entitled: *The President's Cabinet: Studies in the History of an American Institution.*

[2] *Political Essays* (1791), pp. 210, 213, 214, 221.

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in writing, and thus unconsciously helped to predetermine a privy council. In the early autumn of 1787 George Mason of Virginia expressed his fear lest there should "grow out of the principal officers of the great departments" what he termed a *Council of State*.[3] The phrase was quickly reiterated by George Clinton of New York.[4] James Iredell in answer to Mason, perceiving and writing of the analogy between some such body and the English cabinet committee, viewed the possibility of its existence in the new American government as in no wise dangerous.[5] Yet the existence of such a council was so contingent upon arrangements still to be made that no one, it is safe to say, in 1788 could have more than vaguely outlined the functions or determined the place of the institution. After 1789 the terms *ministry* and *ministers of state* occasionally meant no more than the administrative heads of departments and the attorney-general considered as a body of advisers to the president.

I

An executive council in 1787 was no new thing in history. From time immemorial kings had had their groups of intimate advisers. And essential factors of royal influence and power they were in any system of autocratic government. Very early—certainly during the thirteenth century—attempts may be traced in England to put a check on the king by forcing him to choose worthy intimates as his personal counsellors. The problem presented numberless practical difficulties, especially as there was at the time no developed or well defined legislative power apart from the king—no parliament with acknowledged prerogatives. By the time of the Lancastrian kings in the fifteenth century, the privy council was able through force of circumstances to overshadow alike the crown, parliament and the people. Under the Tudors it became the royal instrument for maintaining and extending systematic rule throughout the kingdom: it gathered together and held

[3] *The Life of George Mason,* 1725–1792. . . . . *Ed.* Kate Mason Rowland, ii, 388.

[4] *Letters of Cato,* November 8, 1787, in P. L. Ford's *Essays on the Constitution,* 262.

[5] *Answers to Mr. Mason's Objections to the New Constitution recommended by the late Convention at Philadelphia.* By Marcus. (Dated January 8, 1788). Reprinted in Griffith J. McRee, *Life and Correspondence of James Iredell* (1858), ii, 197.

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all the threads of administration and diplomacy.[6] With the coming to the throne of the obstinate and injudicious line of the Stuarts, the old problem assumed a foremost place. In the first part of the seventeenth century, certainly by the beginning of the reign of Charles I, it became clearly defined. Its solution was assured as a result of the political upheaval which followed. In that century parliamentary government germinated.

The personal monarchy of Charles I, with all that it implied in the way of restriction of popular rights and widespread oppression, was more than a progressive people could endure. At the very outset of the reign the claims of the crown and parliament were felt to be incompatible. The commons demanded supremacy in the state and attempted to exact from the king a promise that he would change his ministers whenever the commons were displeased with them. Parliament really sought to make the government dependent on itself. In other words the idea of parliamentary leadership was assuming a positive and aggressive maturity. Then as perhaps never before English popular opinion won not only expression but capable direction. It was inevitably a time of experiment, but experiment which often lay along fundamental and not wholly new lines.

The demand that the king submit to guidance by such worthy counsellors as parliament could trust was so frequently reiterated after 1640 that its reiteration is good evidence that it had assumed the aspect of a vital political principle. Among numerous instances it was clearly formulated in the petition preceding the Grand Remonstrance (1641), in a document according to which the king's subjects beg:

"That your Majesty will . . . . be pleased to remove from your council all such as persist to favour and promote any of those pressures and corruptions wherewith your people have been grieved, and that for the future your Majesty will vouchsafe to employ such persons in your great and public affairs, and to take such to be near you in places of trust, as your Parliament may have cause to confide in . . . . "[7]

[6] Lord Eustace Percy, *The Privy Council under the Tudors* (Stanhope Prize Essay, 1907), 1, 2.

[7] The passage may easily be seen in its connection in S. R. Gardiner, *Constitutional Documents of the Puritan Revolution* (1889), 129. *Cf.* the similar demand of the Grand Remonstrance, *Ibid.*, 131, 153, 154. The demand occurs also in the Ten Propositions (Pym's work) of June 24, 1641. *Ibid.*, 92. *Cf.* 125, 171 (Nineteen Propositions), 246, 340 (Humble Petition and Advice of 1657).

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Such a demand, when put into practical shape, meant a government residing in a body of men acting under the control of parliament. As perhaps its earliest and crudest expression may be reckoned the Committee of Both Kingdoms (1644–1648).[8] Here, according to Mr. Gardiner, the student of English institutions comes upon "the first germ of the modern Cabinet system." The committee was, according to this same writer, "a body composed of members of both Houses, exercising general executive powers under responsibility to Parliament. . . . . Though it was not, like a modern Cabinet, composed of persons of only one shade of political opinion, the opinion that the war ought to be carried on with vigour was decidedly preponderant in it. . . . . That the Committee thus instituted could never be more than an interesting experiment was the natural result of the fact that the Parliament from which it sprung had no claim to be regarded as a national body."[9] Ephemeral as was this committee, the demand which called it into existence represented a sound principle and one henceforth never to be surrendered. In brief the later English cabinet committee was its consummate practical achievement.

II

As the seventeenth century in England witnessed the crude beginnings of parliamentary government, so it first began to attach political significance to the term *cabinet*. That term had appeared in the language of the sixteenth century. Francis Bacon was among the earliest writers to reflect in his *Essays*[10] its political sense. From his time it may be traced, with many varieties of shadings, through Speed, Massinger, Walter Yonge, Clarendon, Selden, Pepys, Sir John Reresby and Evelyn to Roger North and other memoir-writers of Queen Anne's and the Georgian epoch. It appears in the *State Papers* at least as

[8] The two ordinances establishing the committee, differing in some respects, may be read in Gardiner, *Constitutional Documents*, 190, 192. As yet Gardiner is the only historian who has given them careful consideration. *History of the Great Civil War*, i, 357 ff. The history of this committee affords an excellent opportunity for a short contribution to institutional history.

[9] Gardiner, *History of the Great Civil War* (1886), i, 360, 361.

[10] Edited by S. H. Reynolds, Oxford, 1891, p. 148 and footnote a

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early as 1625, but it is not in frequent use in them till the last decade of the century.[11]

The varied and vague applications of the term it is needless to dwell upon. For much of the seventeenth century it signified a body of royal counsellors or ministers, a small committee of state apt to be concerned with secret or informal measures—such measures as a parliament could not easily fathom or control. It was seldom used without opprobrium even in the early eighteenth century. Nowhere is there better illustration of this than in two discussions of the term as it cropped up in parliament in the years 1692 and 1711 respectively.

"'Cabinet-Council' (retorted an angry member in the house of commons in November, 1692), is not a word to be found in our Law-books. We knew it not before; we took it for a nick-name. Nothing can fall out more unhappily than to have a distinction made of the 'Cabinet' and 'Privy Council'. . . . If some of the Privy Council must be trusted, and some not, to whom must any gentleman apply? Must he ask, 'Who is a Cabinet-Counsellor?' This creates mistrust in the people. . . ."[12] "The method of the cabinet (declared another member on the same occasion) is not the method nor the practice of England; . . . things are concerted in the Cabinet,

[11] The earliest use I have discovered in the *State Papers* is on April 23, 1625: "There is talk of a selected or Cabinet Council, whereto none are admitted but the Duke of Buckingham, the Lords Treasurer and Chamberlain, Lord Brooke, and Lord Conway." It is probable that Walter Yonge refers to the same matter when he records in June, 1625, this entry in his *Diary* (p. 83. Camden Society, 1848): "The King made choice of six of the nobility for his *Council of the Cabinet.*" On July 14, 1630, Sir Thomas Roe referred to Sir Henry Vane—as Mr. Gardiner long since pointed out—as one "who is of the Cabinet." *State Papers—Domestic.* 1629–1631, p. 306. According to Clarendon (*History*, i, 263, Ed. of 1826), within a few years the terms "Committee of State," "Junto," and "Cabinet Council" were used synonymously when referring to a group of royal counsellors. The pamphleteers of the civil wars reveal the similar usage. See *The Clarke Papers*, i, xliii, xlv (Camden Society, 1891). The term "Junto" as well, probably, as "Cabinet Council" was occasionally applied to the Committee of Both Kingdoms. For the more definite usage of the term as probably applying to an inner committee of the Privy Council under Charles II, see entries in Pepys's *Diary* under November 9, 1664; August 26, 1666; November 16, 1667. *The New Oxford Dictionary*, s. v. cabinet, gives much evidence of the political usage of the term.

[12] *Parliamentary History*, v, 731.

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and then brought to the council. . . . . If this method be, you will never know who gives advice. . . . . ."[13]

In January, 1711, discussion arose in the house of lords over the question of using the term *cabinet-council*—as at first it was proposed to do—or *ministers* in a resolution of censure. It was objected that both terms were ambiguous. Moreover, both terms were unknown to the law. Of the two, *ministers* or *ministry* was called "too copious" in its meaning: for the cabinet council, it was wisely observed, did not take in all the ministers. The discussion grew strenuous and was delaying more serious business, when the Earl of Peterborough gave it an amusing turn by reminding his colleagues of a distinction with which he was familiar. He had heard, he said, that "the Privy Counsellors were such as were thought to know everything and knew nothing; and . . . . those of the Cabinet Council thought nobody knew anything but themselves. . . . "A similar distinction, he urged, might be drawn between the ministers and the cabinet council."[14]

However reproachful the reflections cast on the term by members of parliament might be, "cabinet" or "cabinet council" was well recognized and in frequent use by the last decade of the seventeenth century. Thus on June 16, 1690, the Marquis of Carmarthen, writing to King William III, says: "The Lords of the Cabinet think. . . "[15] A week later: "Her Majesty is very diligent at cabinet councils . . . . The Queen hereupon called the cabinet council and gave several orders. . . ."[16] On September 5, 1694, there was recorded the draft of a summons "to the Cabinet Council to meet this day at 5 p.m."[17]

III

Behind the term which it has been comparatively easy to trace was the thing—the committee or council of the cabinet. The beginnings of this committee are obscure. In its beginnings there is little doubt

[13] *Parliamentary History*, 733.
[14] *Ibid.*, vi, 971ff.
[15] *State Papers—Domestic, 1690-1691*, 33.
[16] *Ibid.*, 38.
[17] *Ibid., 1694-1695*, 295.

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that the cabinet committee was an offshoot from the traditional organ of executive power, the formal privy council, which was composed of members who had themselves no direct administrative duties. It was the result of a process of differentiation. The personnel of the committee—except for a glimpse now and then—and its functions are for years vague or quite indeterminable. By 1625 or perhaps a little earlier it was attracting enough attention to be noted in print. About twenty years later Clarendon reckoned it as synonymous with the committee of state.[18] Under Charles II the term, used rather more freely, probably implied greater definiteness. But it can hardly be said to characterize or take on the guise of an institution until the eighteenth century. Thenceforth term and institution became gradually more definable and clear until Macaulay was able to set forth the historical and Bagehot the working relations of the institution in the plan of England's government.

That the practice of discussing important business in an inner committee was old is altogether probable. Sir William Anson believes that the practice may be considered permanent from the latter days of Edward VI.[19] However that may be—and there is no conclusive evidence to establish the point—as long as this interior committee remained under royal control, it could have been only a variation of many another committee of the privy council, called by whatever name. The problem was to arrange machinery whereby parliament could control the king's most intimate advisers. But the remarkable contribution of the seventeenth century toward the formation of England's future government was the idea or conception of the importance of parliamentary control, exercised more especially as time elapsed by the house of commons, over the small and informal group of intimate royal counsellors sometimes termed the cabinet committee. This was the idea behind the Committee of Both Kingdoms. Apparently for the first time—if we may accept Gardiner's conclusion—parliament attempted in 1644 and for a few years after to act in an executive capacity through a ministerial committee. The rest of the century

[18] Sir W. R. Anson regards this committee of state, termed reproachfully a "cabinet council," as the re-appearance of Edward VI's committee of 1553. *Law and Custom of the Constitution.* Pt. ii. The Crown. 2d ed. 92–3.

[19] *Law and Custom.*, Pt. ii, 92.

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was rich with experiments and failures. But the idea, one may safely assert, was continuous and ultimately won practical achievement.

By the close of the seventeenth century there was a cabinet committee of administrative officers exercising functions in the state that had come down from the old Tudor office of principal secretary of state. There was no clear evidence that the individuals composing this committee recognized their collective responsibility for the conduct of affairs. They owed as yet no special allegiance to any one of their number. And they were still unaware that their continuance in office would depend on the continuance of the support of a majority of the house of commons.[20] But in unforeseen ways circumstances kept effecting the practices of government. Only slowly could the meaning of these circumstances be determined. The effect of practices in parliament was seen only after they had crystallized into customary forms. In helping to establish what may be called cabinet rule the harmony of policy between the Whig leaders and two such foreigners as George I and George II was a circumstance of paramount importance. The reactionary effort of George III to reëstablish autocratic rule failed miserably. Yet the fact of its failure was not to be foretold much before the close of the American Revolution. Circumstances and practices were both utilized toward the great end and conception that the seventeenth century had divined: the making of the cabinet committee responsible to the legislature. This idea molded it into a vital institution.

There was no writer in the eighteenth century who attempted to make or indeed who probably could have made an exposition of the place of the cabinet committee in the English system of government. Blackstone whose *Commentaries* first appeared in 1765 was primarily concerned with the law of the constitution. Hence the cabinet committee received no attention in his pages.[21] Even Edmund Burke,

[20] Anson, *Law and Custom*, 105.

[21] "The thirty years from 1760 to 1790" says Prof. A. V. Dicey, "may be well termed as regards their spirit, the age of Blackstone." Again: "The English constitution, looked at from a merely legal point of view, remained in 1827 almost exactly what it had been in 1800. If indeed we leave out of sight the Acts of Union with Scotland and Ireland, we might assert, without much exaggeration, that to a mere lawyer, who recognized no change which was not recorded in the statute book or the law reports, the constitution rested in 1827 on the foundation upon which it had been placed by the Revolution of 1689." *Law and Public Opinion*, 70, 84.

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with claims to be regarded as the greatest political thinker of his day, only casts occasional light on the functions of the cabinet. In his remarkable defense of the whig system of party government, a pamphlet entitled *Thoughts on the Cause of the Present Discontents* (1770), he flashed light along some of the lines of development of the cabinet committee, but nowhere did he attempt to explain it. What he understood better, perhaps, than any man of his time was this: that no formal organization as set forth in a constitution or in the law can ever quite adequately represent the political life of the state. In his own forceful words:

"The laws reach but a very little way. Constitute government how you please, infinitely the greater part of it must depend upon the exercise of the powers which are left at large to the prudence and uprightness of ministers of State. Even all the use and potency of the laws depend upon them. Without them, your commonwealth is no better than a scheme upon paper; and not a living, active, effective constitution . . ."[22]

Such a sentiment probably indicates Burke's perception of the change in the English government that was in course of accomplishment throughout the eighteenth century. In truth the change amounted to a revolution, and its accomplishment through the custom rather than the law of the constitution centered around the cabinet committee. Though no one in the eighteenth century could have expressed the fact, the chief function of that committee was to bring about a coöperation among the different forces of the state without interfering with the legal independence of those forces.[23]

IV

The statesmen of 1787 in the United States had few clear notions, it may be assumed, about the peculiarities of the English cabinet committee. Had cabinet government—as we term it today—been farther along in its development, sufficiently far along at any rate to have been lucidly interpreted in the writings of English statesmen, it is certainly conceivable and perhaps probable that it would have exerted an

[22] Burke's *Works* (Boston, 1866), I, 470.

[23] A. Lawrence Lowell, *The Government of England*, i, 53.

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influence in the formation of the American form of government. Among American writers of that day it is difficult to find explicit references to the functions of the English cabinet committee. There are, however, two notable references on record. Writing of the government of England and the English people, James Iredell remarked in the winter of 1787–88 that "everybody knows that the whole movements of their government. . . . are directed by their *Cabinet Council*, composed entirely of the principal officers of the great departments."[24] Roger Sherman was equally direct when, under date of July 20, 1789, he said in a letter to John Adams regarding England "that the nation is in fact governed by the cabinet-council."[25] The very intricacies of the development of the English cabinet committee which make it historically interesting were quite beyond the compass of even the best minds of the eighteenth century.

The steps toward the American president's council were simple. The Constitution of 1787 clearly contemplating principal officers or heads of departments did not expressly enjoin executive departments. Nevertheless among the first matters to be undertaken when congress assembled in 1789 were the details of departmental organization. Acting especially on the basis of national practices since the breach with England in 1775, but not overlooking either English or colonial experience, congress established three separate departments—foreign affairs (or state), war, treasury, the same number that there had been since 1781. Over these there were placed three secretaries, officials to be appointed by the president with the senate's consent, but removable (it was decided after long debate) at the president's will alone. An attorney-general was likewise arranged for—a distinctly new national official:[26] he was to act not only as federal prosecutor but also as legal adviser to the president and secretaries. Thus the chief magistrate might surround himself with four experts, men qualified in foreign affairs, in finance, in army organization and in the law. In May, 1790, with Thomas Jefferson, Alexander Hamilton, Henry Knox and Edmund

[24] McRee's *Life and Correspondence of James Iredell*, ii, 197.

[25] J. Adams's *Works*, vi, 439.

[26] There were examples enough of local attorneys-general in the colonial epoch. The national attorney-general, it may be noted, was not head of a department until 1870. *Statutes at Large*, xvi, 162–165.

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Randolph in New York City, the administration could be considered assembled.

Here then were the simple elements or factors at the beginning of what was to develop into a characteristic institution of the national government—a president's council to be known as the cabinet. It lay dormant in constitution and statutes. The creative forces which stirred these factors were brought into activity and evidence as soon as the new government was started. The financial requirements especially conspicuous during Washington's first term, the problems of our commercial and foreign relations, the frontier questions involving our attitude to the Indians as well as to British and Spanish neighbors—all these and other matters called not only for the direction of a sagacious president, but also for the assistance of qualified experts.

From the outset Washington regarded the heads of departments as his assistants,[27] though he did not confine his consultations to them alone. But the exercise of his functions as chief magistrate was almost certain to bring these assistants as well as the attorney-general into a council. The process of unification, depending much on personal relations that very naturally often escaped record, was probably unconscious. There are, however, a few well-authenticated facts that serve to make the process clear.

Soon after the new government started Washington took the opinions of his secretaries on matters of real importance separately in writing—in accordance with the letter of the Constitution—or in conversations for the most part unrecorded.[28] At least as early as the spring of 1791 he suggested, while away from the seat of government, the advisability of having the secretaries and vice-president meet in consultation as a body.[29] The suggestion was acted upon, but it is impossible to say how often.[30] There are in 1792 several clear records of what came later to be termed cabinet meetings.[31] There is no evidence, however, that

[27] Washington's *Writings*, ed. W. C. Ford, xi, 397–8. Cf. Hamilton's *Works*, ed. H. C. Lodge, vi, 368.

[28] See especially Jefferson's "opinions" scattered along after April 1, 1790, into the following December. Jefferson's *Writings*, ed. P. L. Ford, v, 150 ff.

[29] Washington's *Diary from 1789 to 1791*, ed. Benson J. Lossing, 162. Also *Writings*, xii, 34, ft. note, 35.

[30] Jefferson's *Writings*, i, 165, v, 320 ff.

[31] *Ibid.*, i, 179, 189–90, 205, 210, etc.

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as a rule the vice-president was included. In 1793 the meetings of the president's advisers were frequent, especially so after Washington's arrival in Philadelphia on April 17. The most notable of these was the meeting of April 19 at which the issuance of the so-called neutrality proclamation was unanimously agreed to. Within a month of that time Jefferson referred to the meetings as occurring "almost every day."[32] And there is abundant evidence to show that the heads of departments and the attorney-general had many consultations through the summer till early in September. About November 1 meetings were again renewed.[33] The difficulties with France growing out of the vexatious and unwise practices of Genet enforced frequent meetings of the president's best-qualified and expert assistants.

In 1793, probably for the first time, the term "cabinet" was occasionally applied to the secretaries together with the attorney-general. By that time they were conceived of as a working body. The application of the term rested on the obvious fact that the president had summoned to his aid a committee of officials somewhat similar to the English cabinet committee. There was nothing essentially new in such a committee, closely related on the one hand to administrative departments, and on the other as advisers to the chief magistrate. There is no evidence but the term to show that in characterizing the president's advisers we took into account anything but the superficial resemblance to the English institution. What in all probability we did was to adopt a well-recognized English term, the significance of which so far as the average man was concerned had been pretty well settled in the seventeenth century.[34]

[32] Jefferson's *Writings*, vi, 250.

[33] *Ibid.*, i, 218 ff. vi, 191 ff.

[34] The first explicit reference that I have noted to the principal officers of the president as a "council" occurs in a letter of Jefferson to Madison of May 12, 1793: "The Anglophobia has seized violently on three members of our council" (Jefferson's *Writings*, vi, 250). On May 19 Jefferson writes of the group as "our conclave" (*Ibid.*, 261). On June 13 Madison is first to apply the well-known English term, writing of "the discussions of the cabinet" (Madison's *Writings*, ed. G. Hunt, vi, 132). Again on July 22 he speaks of Hamilton's "cabinet efforts" (*Ibid.*, 136). On August 2 the term "cabinet" first appeared in Jefferson's *Anas* (Jefferson's *Writings*, i, 253). On August 18 Jefferson wrote of a paper "read in cabinet for the 1st time" (*Ibid.*, vi, 394). On April 12, 1794, Rufus King referred in his *Diary* to the "cabinet" (*Life and Correspondence*, i, 519). Sometimes the expression was "ministerial cab-

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The term appeared first in the letters of several leading statesmen—men in close touch with the government. It is soon found in the newspapers of the day. Not, however, until Jefferson's administration were there any notable references to the cabinet in congressional debate. The term was freely used and criticized in a sensational discussion in March, 1806, which revealed John Randolph in one of his most querulous moods, full of sound and fury against the men in power.[35] In reply to Randolph, an opponent from Pennsylvania was moved to remark as follows: "I wish the gentleman had deigned to inform us what he meant by a Cabinet. I perceive no such thing in the Constitution or laws. I believe the phrase is peculiar to the Court of St. James, where the Ministers of the King are called the Cabinet." Truth, however, forced him at once to add this statement of fact: "I have heard the Heads of Departments and the Attorney-General assembled by the President on great occasions, called the Cabinet."[36]

The process whereby the cabinet was created by Washington has been set forth. Time and the inevitable demands for a skilful executive policy gradually made the conception of the significance of the cabinet more clear and molded the institution into permanence. Probably by the close of Jefferson's administration, when the national government had been in operation for twenty years, the functions of this cabinet committee of experts in aid of the chief magistrate were generally

inet" (*American Mercury*, Hartford, Ct., November 23, 1795, quoting a letter from Philadelphia of October 14), and not infrequently it was "executive cabinet" (Jefferson to Madison, January 22, 1797; also debates in the house of representatives of February 27, 1802, and January 11, 1803). The first reference to the group that I have come across in the Congressional debates is on April 25, 1798—"the great council of the nation." On February 20, 1801, Jefferson wrote to Samuel Dexter using the phrase "Cabinet Council of the President." The phrase, applied locally to a New York state group of officials as a "cabinet council," I can find as early as May 20, 1792 (*Life and Correspondence of Rufus King*, i, 410).

There are few variations as time advanced. From many examples collected over the years of Jefferson's administration (1801–1809) I am convinced that then the term became well established in popular usage. There is considerable evidence within those years that the cabinet was looked upon as a definite institution of the American government. As Jefferson could write with good reason: "The third administration. . . . . presented an example of harmony in a cabinet of six persons, to which perhaps history has furnished no parallel" (*Writings*, ix, 307).

[35] *Annals of Congress*, 9 Cong., 1st sess. (1805–6), 561, 574–5, 590, 606.

[36] *Ibid.*, 744.

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understood. Here and there, notably in the writings of Alexander Hamilton and Thomas Jefferson, the student will find evidence that the conception of the cabinet was taking definite form. As early as 1792 Hamilton had said:

"The success of every government . . . . must always naturally depend on the energy of the executive department. This energy again must materially depend on the union and mutual deference which subsists between the members of that department, and the conformity of their conduct with the views of the chief executive."[37]

In 1800 Hamilton expressed in the clearest fashion the theory on which every cabinet in the United States must rest. His thought reflects the fact that the cabinet committee had reached a position at which its general function could be defined by a man of insight. He wrote:

"A President is not bound to conform to the advice of his ministers. He is even under no positive injunction to ask or require it. But the Constitution presumes that he will consult them; and the genius of our government and the public good recommend the practice. As the President nominates his ministers, and may displace them when he pleases, it must be his own fault if he be not surrounded by men who, for ability and integrity, deserve his confidence. And if his ministers are of this character, the consulting of them will always be likely to be useful to himself and to the state. . . . . When, unhappily, an ordinary man refrains from consulting with his constitutional advisers, he is very apt to fall into the hands of miserable intriguers . . . .[38]

There was of course a reflection here on John Adams's unfortunate experiences with his cabinet advisers—a grim touch that might reasonably make any prospective successor of Adams think well about those whom he would place in the secretaryships. The very contrast that Jefferson's cabinet—a most harmonious body—revealed, is evidence that Jefferson was alive to the importance and utility of the institution. In 1807 he put his thought thus:

"For our government although in theory subject to be directed by the unadvised will of the President, is, and from its origin has been a very different thing in practice . . . . all matters of importance or

[37] Hamilton's *Works*, vi, 367.
[38] *Ibid.* 419.

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difficulty are submitted to all the heads of departments composing the cabinet. . . . . So that in all important cases the Executive is in fact a directory. . . . ."[39]

It is well known that the method of cabinet meetings which Washington had suggested in 1791, Jefferson for the most part followed. "I practiced this method," he said, "because the harmony was so cordial among us all, that we never failed by a contribution of mutual views on the subject, to form an opinion acceptable to the whole . . . ."[40] It was not a method sanctioned by a strict interpretation of the Constitution, as Jefferson was well enough aware. But it accomplished things quickly and in view of the many difficult problems before a president, it was inevitably the most satisfactory method.

When in January, 1813, Josiah Quincy of Massachusetts harshly arraigned the government in power for the project of invading Canada, he seldom made any reference to the chief executive, James Madison. His invective was directed against what he regarded as the source of administrative power and disturbance—the cabinet. His whole line of thought suggests today, as it may have suggested then, the weakness of the chief magistrate. But it is peculiarly significant of the place the cabinet could take by that time, according to the opinion of a shrewd observer, in the organization of the national government. Near the opening of his speech he declared:

"I have some claim to speak concerning the policy of the men who constitute the American cabinet. For eight years I have studied their history, characters, and interests. . . . . I say then, sir, without hesitation, that in my judgment the embarrassment of our relations with Great Britain . . . . . has been, is, and will continue to be, a main principle of the policy of this American cabinet."[41] As he advanced in his argument, he remarked: "It is a curious fact, but no less true than curious, that for these twelve years past the whole affairs of this country have been managed, and its fortunes reversed under the influence of a cabinet little less than despotic, composed, to all efficient purposes, of two Virginians and a foreigner. . . . . During

[39] Jefferson's *Writings*, ix, 69–70.

[40] *Ibid.*, 273–4.

[41] *Speeches delivered in the Congress of the United States: By Josiah Quincy. . .* 1805–1813. Ed. by his son, Edmund Quincy. 379–80.

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this whole period the measures distinctly recommended have been adopted by the two Houses of Congress with as much uniformity and with as little modification, too, as the measures of the British ministry have been adopted during the same period by the British Parliament. The connection between cabinet councils and parliamentary acts is just as intimate in the one country as in the other."[42] Toward the end of his speech Quincy dwelt at some length on the "Virginia influence" as it had manifested itself in the presidency. He regarded the cabinet as doing everything in its power to keep the succession in the Virginia line—in particular to make Monroe the successor of Madison:

"This is the point on which the projects of the cabinet for the three years past have been brought to bear, that James the First should be made to continue four years longer. And this is the point on which the projects of the cabinet will be brought to bear for the three years to come, that James the Second shall be made to succeed, according to the fundamental rescripts of the Monticellian dynasty."[43]

Men might persist—as they did—in objecting to the word *cabinet* even long after this. By this time at any rate term and institution had come into their American place. The old English term henceforth characterized not so much a committee different in make-up from the English cabinet committee as one differently related to the government of which it was a part.

Jackson was the first president, as one might expect, to use the term *cabinet* in an annual message. It appeared in his first message of December 8, 1829, and may be found in a few other public documents issued or signed by him.[44] Tyler again uses the term to characterize his advisers in his fourth message of December 3, 1844. The word has appeared occasionally since Tyler in the public and formal papers of succeeding presidents; but its use has been rare.[45] The fact that the term has at last gained a place in the language of the statute law of the United States is remarkable enough to call for a word of explanation.

In an act approved and signed by President Roosevelt on February

[42] *Ibid.*, 397–8.
[43] *Ibid.*, 402.
[44] Richardson's *Messages and Papers of the Presidents*, ii, 448; iii, 5, 19, 36.
[45] *Ibid.*, iv, 350, 659; v, 163, etc.

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26, 1907, provision was made for increasing the salaries of the secretaries, attorney-general and postmaster-general from $8,000—the sum at which they were fixed by law in 1874[46]—to $12,000. The subject had been introduced into the house of representatives early in the previous December in connection with a bill for large appropriations for the year 1907–1908. On Friday, December 14, Mr. Lucius N. Littauer of New York proposed as an amendment that the compensation of the head of executive departments "who are members of the president's cabinet, shall be at the rate of $12,000 per annum."[47] James R. Mann of Illinois was quick to recognize the appearance of a term hitherto unknown to the statute law and at once criticised the language of the proposed amendment. "I suppose the gentleman is aware," Mann argued, "that there is no place in the statutes where there is any recognition of the president's cabinet. The gentleman in his amendment provides for an increase of salary for the heads of departments who constitute the president's cabinet. There is no definition in law as to what constitutes the president's cabinet. Would it not be wiser to designate the nine secretaries—the heads of the various departments—who, in fact, constitute the cabinet?" The succeeding colloquy was as follows:

Littauer. "I have no pride in this language, but if the gentleman will permit me to suggest, the head of the department of labor, as he designates him, should be called the head of the bureau of labor."

Mann. "Well, I beg the gentleman's pardon; the law says that there shall be a department of labor with a commissioner at the head of it. The bureau of commerce and labor calls it a bureau, but that is in violation of the statute."

Littauer. "I am quite willing to accept any amendment which will carry out this intent, which is that the compensation of heads of executive departments, who are members of the president's cabinet, shall be compensated at this salary. I do not believe such designation can ever be misunderstood."[48]

[46] January 20.
[47] *Congressional Record*, House Proceedings, December 14, 1906, p. 381 ff.
[48] *Ibid.*, 381.

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The course of the bill was anything but smooth. Nevertheless neither senate nor house touched essentially the language which Mr. Littauer had proposed. It was language, as he remarked, which could not be misunderstood. And so the recognition of the cabinet as defined by him went consciously into the statute law of the United States.[49]

[49] The salaries are found in *Statutes at Large*, xxxiv, pt. i, chaps. 1635, 2907. The part of the statute reproducing Littauer's statement reads: "Sec. 4. That on and after March fourth, nineteen hundred and seven, the compensation of the Speaker of the House of Representatives, the Vice-President of the United States and the heads of Executive Departments who are members of the President's Cabinet shall be at the rate of twelve thousand dollars per annum each . . . . " Chap. 1635: 993.

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THE INCREASED CONTROL OF STATE ACTIVITIES BY THE FEDERAL COURTS

ROBERT BRUCE SCOTT

It has been well said that "The question of the relation of the states to the federal government is the cardinal question of our constitutional system. At every turn of our national development we have been brought face to face with it, and no definition either of statesmen or of judges has ever quieted or decided it. It cannot, indeed, be settled by the opinion of any one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question."[1]

The current discussion provoked by the apparently increasing frequency with which the federal judiciary interferes with the enforcement of the legislative will of the states aptly emphasizes the force of this conclusion. Within late years the federal courts have interposed in numerous cases involving state activities and have asserted the power to control such activities under various circumstances. A brief enumeration of some of the most recent instances of this exercise of power will best indicate the frequency and apparent freedom with which it has been resorted to. Thus it has been held that state boards and commissions, attorneys general and prosecuting attorneys may be enjoined from putting into effect a schedule of railroad rates[2] or gas,[3] telegraph[4] or stockyards rates.[5] alleged to

[1] Woodrow Wilson: *Constitutional Government in the United States*, p. 173.

[2] Smyth v. Ames (1898), 169 U. S. 466; Prout v. Starr (1902), 188 U. S. 537; Reagan v. Farmer's Loan & Trust Co. (1894), 154 U. S. 362; Clyde v. Richmond & D. R. Co. (1893), 57 Fed. 436; Chicago, etc., Ry. Co. v. Devy (1888), 35 Fed. 866; Poor v. I. C. Ry. Co. (1907), 155 Fed. 226; Perkins v. No. Pac. Ry. Co. (1907), 155 Fed. 445; R. R. Comsn. of La. v. Texas & P. Ry. Co. (1906), 144 Fed. 68; St. Louis & S. F. R. Co. v. Hadley (1908), 161 Fed. 419; Miss. R. R. Comsn. v. I. C. R. R. Co. (1906), 203 U. S. 335; Cent. of Ga. Ry. Co. v. R. R. Comsn. of Ala. (1908), 161 Fed. 925; So. Ry. Co. v. McNeill (1907), 155 Fed. 772.

[3] Haverhill Gas Light Co. v. Barker et al. (1901), 119 Fed. 694; Cons. Gas Co. v. City of N. Y. (1907), 157 Fed. 849; Lindsley v. Natural Carbonic Gas Co. (1908), 162 Fed. 954.

[4] W. U. Tel. Co. v. Mygatt (1899), 98 Fed. 335.

[5] Cotting v. Kansas City Stockyards Co. (1897), 79 Fed. 679.

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be invalid as working a deprivation of property without due process of law or as otherwise violating the federal constitution.[6]

State officers have been restrained from levying taxes on the ground that they were attempting to act without lawful authority.[7] The cancellation or revocation of licenses to do corporate business because of the violation of state law has been enjoined.[8] The enforcement of city ordinances has been prevented[9] and seizure of property under a dispensary law has been restrained.[10] These are but a few of the many instances where the power of the federal courts has been used to stay the operation of state laws and the execution of state policies, as manifested in legislative acts.

Furthermore, it is to be noted that in addition to the cases where purely negative control has been exercised, there are instances of the grant of positive remedies by the federal courts against state or local officers, e. g., in compelling through the writ of mandamus the levy of a tax to pay a judgment on township bonds.[11]

These cases have been confined to no locality; north and south, east and west, have felt the heavy hand of the national government. Nor has such control been restricted to a single field of state law; criminal as well as civil liability to the state has been involved.

At times clashes and serious conflicts between the federal and state authorities seemed imminent in connection with some of these suits and much harsh criticism of the action of the federal courts has been made. An association of attorneys general of various states has memorialized the president and congress for remedial legislation; similar action has been taken by the legislature of Nebraska;[12] the president has made reference to the often expressed discontent over

[6] So. Ry. Co. v. Greensboro Ice & Coal Co. (1904), 134 Fed. 82.

[7] Univ. of South v. the Jetton (1907), 155 Fed. 182; Taylor v. L. & N. R. Co. (1898), 88 Fed. 350.

[8] C. R. I. & P. Ry. Co. v. Swanger (1908), 157 Fed. 783; Metro. L. Ins. Co. v. McNall (1897), 81 Fed. 888; C. R. I. & P. Ry. Co. v. Ludwig (1907), 156 Fed. 152; Mut. L. Ins. Co. v. Boyle (1897), 82 Fed. 705.

[9] Iron Mt. R. Co. v. City of Memphis (1899), 96 Fed. 113; Defiance Water Co. v. City of Defiance (1898), 90 Fed. 753.

[10] Scott v. Donald (1897), 165 U. S. 107. See also Minneapolis Brewing Co. v. McGilvary (1900), 104 Fed. 258.

[11] Graham v. Folsom, 200 U. S. 248. (1906).

[12] Cong. Record, 60th Cong. 1st sess., p. 133.

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the situation in a message to congress;[13] and various bills have been proposed and are pending in congress in relation to the matter.

This paper addresses itself to a consideration of whether the recent use of injunctions by federal courts as to state laws is an unwarranted exercise of power over the states by the federal government. It may, at the outset, be conceded that the question is one of great difficulty and that its proper solution is of vast importance in determining the proper relations of the states and the nation in our dual system. Able lawyers, learned publicists and wise judges have disagreed in their conclusions on it, and one may well hesitate before taking a decided stand thereon.

The question became of greatest interest in connection with the case of ex parte Young,[14] decided by the United States supreme court, March 23, 1908. It was there held that the attorney general of Minnesota might be enjoined at the suit of individual stockholders of a railroad from using the state courts to enforce an unconstitutional rate law, which affected the state only in its general welfare.[15] It was vigorously contended that such an action was in effect a suit against a state and therefore within the prohibition of the eleventh amendment to the federal constitution, which forbids the commencement or prosecution of any suit against one of the United States by citizens of another state or by citizens or subjects of any foreign state. There is thus raised the whole question of the suability of a state, and no intelligent discussion of the action of the federal courts in this and similar cases is possible without a thorough understanding of the doctrine of the immunity of the states from suit.[16]

It cannot be denied that there were conflicting views on this in 1787–8. Hamilton in the *Federalist*[17] argued that debts of the states could not be enforced by suit, since "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." Madison and Marshall in the Virginia Convention met

[13] December 3, 1907.

[14] 209 U. S. 123.

[15] For a diametrically opposite view see State v. So. R. Co. (N. C. 1907), 59 S. E. 570.

[16] See address of William D. Guthrie in *Proceedings of New York State Bar Association*, 1908.

[17] Number 81.

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the objections of George Mason and Patrick Henry in a similar way. Madison said: "Its jurisdiction (the federal jurisdiction) in controversies between a state and citizens of another state is much objected to, and perhaps not without reason. It is not in the power of individuals to call any state into court. The only operation it can have is that, if a state should wish to bring a suit against a citizen, it must be brought before the federal court. . . . . It appears to me that this (clause) can have no operation but this—to give a citizen a right to be heard in the federal courts; and, if a state should condescend to be a party, this court may take cognizance of it."[18] Marshall, in answer to the same objection, said: "With respect to disputes between a state and the citizens of another state, its jurisdiction has been decried with unusual vehemence. I hope that no gentleman will think that a state will be called at the bar of the federal court. . . . . It is not rational to suppose that the sovereign power should be dragged before a court."[19] On the other hand James Wilson[20] and Edmund Randolph[21] not only thought that such jurisdiction was conferred but that it was wisely conferred.

The concrete question arose in 1793 in the case of Chisholm v. Georgia,[22] where it was held that a state was liable to be sued by a citizen and that a judgment might be rendered against it. Justice James Wilson in his opinion said: "This is a case of uncommon magnitude. One of the parties to it is a state; certainly respectable, claiming to be a sovereign. The question to be determined is, whether this state, so respectable, and whose claims soar so high is amenable to the jurisdiction of the supreme court of the United States? This question, important in itself, will depend on others, more important still; and may, perhaps, be ultimately resolved into one no less radical than this—'Do the people of the United States form a nation?'" In answer to this question Wilson declared: "As to the purposes of the Union . . . . Georgia is not a sovereign state."

Georgia was highly incensed, and the discussion and agitation consequent on the case resulted in the adoption of the eleventh

[18] 3 Elliott's *Debates*, 533.
[19] *Ibid.*, 555.
[20] 4, *Ibid.*, 491.
[21] 3, *Ibid.*, 573.
[22] 2 Dall. 419.

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amendment in 1798, declaring that the judicial power should not be construed to extend to suits brought against the states by citizens of other states.

The doctrine of the immunity of a sovereign from suit seems to have been derived from the principles of the Roman Law and the adoption of the monarchical principle that the "sovereign can do no wrong,"[23] and from the laws and practices of our English ancestors.[24] But although the king could not be sued, because no court could have jurisdiction over him, the individual was not without redress. Thus Blackstone says:[25] '—Are then, it may be asked, the subjects of England totally destitute of remedy, in case the crown should invade their rights, either by private injuries or public oppression? To this we may answer, that the law has provided a remedy in both cases.

"And, first, as to private injuries: if any person has, in point of property, a just demand upon the king, he must petition him in his court of chancery, where his chancellor will administer right as a matter of grace though not upon compulsion. . . . . Next, as to cases of ordinary public oppression, where the vitals of the constitution are not attacked, the law hath also assigned a remedy. For as a king cannot misuse his power, without the advice of evil counsellors, and the assistance of wicked ministers, these men may be examined and punished."

Thus from time immemorial the English subject might petition the sovereign that right be done him. Petitions of right as a manner of seeking relief against the king came to be granted practically as a matter of course so that it was said by our supreme court that "It is believed that this petition of right, as it has been practised and observed in the administration of justice in England, has been as efficient in securing the rights of suitors against the crown in all cases appropriate to judicial proceedings, as that which the law affords to the subjects of the king in legal controversies among themselves. 'If the mode of proceeding to enforce it be formal and ceremonious, it is nevertheless a practical and efficient remedy for the invasion by the sovereign power of individual rights.' United States v. O'Keefe, 11 Wall. 178."[26]

[23] Goodnow, *Comparative Administrative Law*, II, 149.
[24] United States v. Lee, 106 U. S. 196.
[25] Book I, pp. 243–4.
[26] United States v. Lee, 106 U. S. 196, 205.

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Again the court pointed out [27] that "The English maxim does not declare that the government or those who administer it, can do no wrong; for it is a part of the principle itself that wrong may be done by the governing power, for which the Ministry for the time being is held responsible."

In the case of Feather v. Queen[28] Lord Chief Justice Cockburn declared that "no authority is needed to establish that a servant of the crown is responsible in law for a tortious act done by the authority of the crown, a position which appears to us to rest on principles which are too well settled to admit of question and which are alike essential to uphold the dignity of the crown on the one hand and the rights and liberties of the subject on the other."

The English courts had long exercised control over officers, and all the great prerogative writs like prohibition, mandamus, habeas corpus and quo warranto were issued against administrative and judicial officers.[29] And at the time of the adoption of our constitution the court of chancery had full power to restrain an officer of the crown from doing irreparable injury to property rights.

The English law then recognized the liability of officers to suits by individuals whose rights had been violated, and distinguished between such suits and those against the crown. In view of this it is significant that the eleventh amendment forbids suits against states, but not against officers of states. Hamilton in the *Federalist*[30] expressly laid down the doctrine that the federal courts would be empowered to set aside state laws in conflict with the federal constitution, in these words:

"What would avail restrictions on the authority of the state legislatures, without some constitutional mode of enforcing the observance of them? The states . . . . . are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, and others with the principles of good government. The impositions of duties on imported articles, and the emission of paper money, are specimens of each kind. No man of sense will believe that such prohibitions would be scrupulously regarded, without some effect-

[27] Langford v. U. S., 101 U. S. 341, 343.
[28] Feather v. Queen (1865), 6 B. & S. Q. B. 257, 297.
[29] Goodnow, *Principles of the Administrative Law of the United States*, 420 *et seq.*
[30] Number 80.

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ual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the state laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union. There is no third course that I can imagine."

He thus clearly foresaw that power to enforce the prohibitions against the states must reside somewhere in the federal government and preferably in the courts.

What, then, has been the course of the supreme court with reference to this question? That an unconstitutional act is null and void and that it is the duty of the courts so to declare when a proper suit arises between proper parties is thoroughly settled. Said Chief Justice Marshall in Marbury v. Madison:[31] "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the constitution, if both the law and the constitution apply to a particular case, so that the court must decide the case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law: the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."

The state courts have exercised this power repeatedly as to state laws and have issued injunctions against state officers to restrain enforcement of such laws, where irreparable injury would result.[32] Why should not the federal courts have the same power within the sphere of their jurisdiction? The federal constitution can be preserved only by declaring state legislative acts which are repugnant to it null and void.[33] In cases of equitable cognizance involving such acts, e. g., if a multiplicity of suits will be prevented, or if irreparable injury would otherwise result, or if there is no adequate remedy at law, a writ of injunction is necessary and proper to preserve the *status quo* and to protect the rights of the parties.

[31] 1 Cranch, 177.
[32] 22 Cyc. 884; State v. Cunningham, 81 Wis. 440.
[33] Cohens v. Virginia, 6 Wheat., 264, 414.

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Injunctions have long been issued by United States courts to restrain operation of state laws, and there is in that act alone no novel exercise of federal jurisdiction. In 1824 in the case of Osborn v. Bank of the United States[34] it was held that the auditor of the state of Ohio could be enjoined from placing the money of the bank which he had seized, in the treasury of the state, under authority of an alleged law that was in fact unconstitutional and void, because an interference with an instrument of the federal government. The contention was there made that this was in effect a suit against a state and therefore within the prohibition of the eleventh amendment, but it was held that the amendment applied only to those suits in which a state was a party on the record, and the state not being named here as a party, the amendment did not apply. This test of when a state is to be regarded as a party was later modified in Georgia v. Madrazo[35] and again in ex parte Ayers,[36] where it was declared that the court will not be limited entirely by the names of the parties of record in determining who is the real party in an action. But the doctrine of the Osborn case as to injunctions by federal courts against the execution of unconstitutional state laws has been adhered to and enforced again and again.[37] In Pennoyer v. McConnaughy[38] it was said: "The general doctrine of Osborn v. Bank of the United States, that the circuit courts of the United States will restrain a state officer from executing an unconstitutional statute of the state, when to execute it would be to violate rights and privileges of the complainant which had been guaranteed by the constitution and would work irreparable damage and injury to him, has never been departed from."

These cases are based upon the common law rule that an officer, not a judge of a higher court, is liable for every act in excess of jurisdiction; that the excess of jurisdiction which will cause the liability may result from the attempt to enforce a statute which is regarded

[34] 9 Wheat., 738.

[35] 1 Pet. 110, 124.

[36] 123 U. S. 443.

[37] Smyth v. Ames, 169 U. S. 466; Reagan v. Co., 154 U. S. 362; Prout v. Starr, 188 U. S. 537; In re Tyler, 149 U. S. 164; Pennoyer v. McConnaughy, 140 U. S. 1; Scott v. Donald, 165 U. S. 58; Tindal v. Wesley, 167 U. S. 204; Gunter v. Atl. Coast Line, 200 U. S. 273.

[38] 140 U. S., 1, 9.

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by the courts as unconstitutional; and that there is in addition some ground of equitable cognizance, such as threatened irreparable injury.[39]

If the act which the state officer seeks to enforce be a violation of the federal constitution, the officer comes into conflict with the superior authority of that constitution and is stripped of his official character and is subjected to the consequences of his individual conduct.[40] The state is not the real party, since it cannot have authorized the threatened illegal acts and cannot shelter the wrongdoer.[41] He is but an individual tort-feasor.

The court said in Poindexter v. Greenhow[42] as to an unconstitutional law: "That, it is true, is a legislative act of the state of Virginia, but is it not a law of the state of Virginia. The state has passed no such law, for it cannot; and what it cannot do it certainly in contemplation of law has not done."

The limits of this paper will not permit a review of the many cases in which has been discussed the question of when a state is a party to a suit within the meaning of the eleventh amendment. It is not easy to reconcile all the decided cases, though a careful analysis of them will show more consistency than might appear from a careless reading.[43] The rule was stated by Mr. Justice Gray in Belknap v. Schild as follows:

"In a suit in which the state is neither formally or really a party its officers, although acting by its order and for its benefit, may be restrained by injunction, when the remedy at law is inadequate, from doing positive acts, for which they are personally and individually liable, taking or injuring the plaintiff's property, contrary to a plain official duty requiring no exercise of discretion and in violation of the constitution or law of the United States. . . . . But no injunction can be issued against officers of a state to restrain or control the use of property already in the possession of the state, or money in its treasury when the suit is commenced, or to compel the state to conform its obligations; or where the state has otherwise such an interest in the object of the suit as to be a necessary party."

[39] 29 Cyc. 1441.
[40] In re Ayers, 123 U. S. 444, 507.
[41] Pennoyer v. McConnaughy, 140 U. S. 1.
[42] 114 U. S. 270, 288.
[43] See *Harvard Law Review*, 20:246; 21: 527. *Columbia Law Review*, 7: 609–11.

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Mr. William D. Guthrie has recently suggested that the eleventh amendment would be satisfied if we give the state the immunity of the crown.[44] Its officers would still be liable as responsible principals, thus affording individuals in this country the protection of the rights enjoyed by Englishmen. Under our theory of government an unconstitutional statute cannot legalize and equity should give its preventive relief when a threatened act would irreparably injure the plaintiff.[45]

It is apparent that, if when sued in such cases as ex parte: Young, state officers can hide behind the eleventh amendment, the fourteenth amendment is rendered practically nugatory in its prohibitions against the states. The interesting question is thus raised of the effect of the latter upon the former.

It was suggested in the argument of the Young case that it is "not so important to know what the constitution of the United States meant when the eleventh amendment became a part of it as it is to know what that instrument has meant since the fourteenth amendment became effective." The question is whether, if a state legislature passes an act that contravenes the provisions of the fourteenth amendment, prohibiting legislation which operates to deprive a person of life, liberty or property without due process of law, or denies to any person the equal protection of the laws, courts of equity have jurisdiction to restrain state officers from enforcing such legislation . . . . whether such a suit is a suit against the state.

Justice Shiras touched upon this in Prout v. Starr,[46] where he said: "The constitution of the United States, with the several amendments thereof, must be regarded as one instrument, all of whose provisions are to be deemed of equal validity. It would, indeed, be most unfortunate if the immunity of the individual states from suits by citizens of other states, provided for in the eleventh amendment, were to be interpreted as nullifying those other provisions which confer power on congress to regulate commerce among the several states, which forbid the states from entering into any treaty, alliance or confederation, from passing any bill of attainder, *ex post facto* law or law-

[44] *Proceedings of New York State Bar Association*, 1908, p. 220.

[45] Virginia Coupon Cases. . . .Allen v. B. & O. R. R., 114 U. S. 311; Scott v. Donald, 165 U. S. 107; Mechem, Public Officers, § 995.

[46] 188 U. S. 537, 543.

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impairing the obligation of contracts, or without the consent of congress from laying any duty of tonnage, entering into any agreement or compact with other states, or from engaging in war. . . . . all of which provisions existed before the adoption of the eleventh amendment, which still exist, and which would be nullified, and made of no effect, if the judicial power of the United States could not be invoked to protect citizens affected by the passage of state laws disregarding these constitutional limitations. Much less can the eleventh amendment be successfully pleaded as an invincible barrier to judicial inquiry whether the salutary provisions of the fourteenth amendment have been disregarded by state enactments."

In General Oil Co. v. Crain[47] Mr. Justice McKenna speaks of "the error, which appears with a kind of periodicity, varied in presentation, to accommodate the particular exigency, that a state is inevitably brought into court when the execution of its laws is arrested by a suit against its officers. It seems to be an obvious consequence that as a state can only perform its functions through its officers, a restraint upon them is a restraint upon its sovereignty from which it is exempt without its consent in the state tribunals, and exempt by the eleventh amendment of the constitution of the United States, in the national tribunals. The error is in the universality of the conclusion, as we have seen. Necessarily to give adequate protection to constitutional rights a distinction must be made between valid and invalid state laws, as determining the character of the suit against state officers. And the suit at bar illustrates the necessity. If a suit against state officers is precluded in the national courts by the eleventh amendment to the constitution and may be forbidden by a state to its courts, as it is contended in the case at bar that it may be, without power of review by this court, it must be evident that an easy way is open to prevent the enforcement of many provisions of the constitution, and the fourteenth amendment, which is directed at state action could be nullified as to much of its operation. . . . . Zeal for policies, estimable as it may be, of themselves, may overlook or underestimate private rights. The swift execution of the law may seem the only good, and the rights and interests which obstruct it be regarded as in a kind of outlawry."

[47] 209 U. S. 211, 226.

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The majority of the court in the Young case expressly refused to examine or decide the question whether the adoption of the fourteenth amendment in any way altered or limited the effect of the eleventh amendment.[48] But Mr. Justice Harlan, dissenting, expressly holds that "the eleventh amendment has not been modified in the slightest degree as to its scope or meaning by the fourteenth amendment and a suit which, in its essence, is one against the state remains one of that character, and is forbidden even when brought to strike down a state statute alleged to be in violation of that clause of the fourteenth amendment forbidding the deprivation by a state of life, liberty or property without due process of law."[49]

Though the court may never hold that the fourteenth amendment in itself in any way altered the eleventh amendment, there remains the possibility that congress might confer on the courts jurisdiction against state officers where they were about to violate the later amendments, under the power therein granted congress to enforce their provisions by appropriate legislation.

In Fitts v. McGhee[50] the court practically held that where state officers were not expressly directed to enforce a statute, alleged to be unconstitutional, a suit against them to restrain its enforcement was in effect a suit against the state. This illogical distinction was quickly taken up by many of the state legislatures and in framing acts regulative of railroad rates care would be taken not to charge any officer specially with their enforcement. Stringent penal provisions to be enforced through the criminal laws would then be added and it was thought in this way that federal injunctions could be avoided.

Such was the situation in the Young case[51] where the Minnesota rate law was cunningly framed with an express provision that no duty should rest upon the railroad and warehouse commission to enforce any rates specifically fixed by any statute of the state. Thus it was thought to prevent suits against the commission or the attorney general under the doctrine of the Fitts case. The state could

[48] 209 U. S. 150
[49] 209 U. S. 182.
[50] 172 U. S. 516.
[51] 209 U. S. 123.

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not be sued, eo nomine, under the eleventh amendment. Then apparently the validity of the act could be tested only by disobedience and defense in a criminal suit. But that avenue of approach to the courts was practically closed by provision for penalties which it is said would have amounted to several hundred million dollars in one month. Each violation of the freight act was punishable by imprisonment for ninety days. Disobedience of the passenger rate act was punished by a fine not exceeding $5000 or imprisonment not exceeding five years, or both fine and imprisonment, the sale of each ticket being a separate offense.

Besides this, the act provided that any officer, director, agent or employee of a railroad company, who caused or *counseled, advised* or assisted any such company to violate the act, should be guilty of a misdemeanor and might be prosecuted in any county into which the railroad extended and in which it had a station.

Thus the railroad attorneys could not even in good faith advise their companies that the commodity rates were non-compensatory or confiscatory, without liability of being tried in the most remote county of the state and there being imprisoned in the county jail for a period not exceeding ninety days, which was the only punishment under this section.

The court well said: "The necessary effect and result of such legislation must be to preclude a resort to the courts (either state or federal) for the purpose of testing its validity. The officers and employees could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the Company." Thus it would be deprived of the equal protection of the laws.

The court was obliged to modify if not overrule the Fitts case with respect to the distinction that state officers may not be enjoined unless they are specially charged. It was held that if the officer had by virtue of his office some connection with the enforcement of the act he might be enjoined, though not specially so charged in the act itself. From the standpoint of the plaintiff's rights, it can make no difference whether they are being infringed by one having a supposed special duty or merely a general duty to attack them.

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That this distinction in the Fitts case was illogical will be apparent on a moment's reflection. It amounts to this: If a state legislature itself exercises its discretion and specifically declares a state officer shall execute an unconstitutional statute, then the officer may in a proper case be enjoined from instituting the suit, and it will not be regarded as a suit against the state. But if the state legislature, instead of itself exercising that discretion, delegates it to the state officer to allow him to decide whether he shall or shall not institute such judicial proceeding, then no matter how clearly it may appear that the officer is about to institute such proceeding, he is exempt from injunction and suit because he is vested with a discretion. In other words, as was pointed out to the court, "the delegated discretion is an absolute barrier to the remedy, whereas the discretion exercised by the legislature itself simply paves the way for the remedy."

Conceding that the court cannot control the exercise of the discretion of an officer, it was held that an injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer. There can be no discretionary power to enforce an act, which in contemplation of law does not exist.

The court had held in Davis & Farnum Manufacturing Company v. Los Angeles[52] and in Dobbins v. Los Angeles[53] that where irreparable injury will be inflicted on property rights through a void law or ordinance, an injunction will issue to restrain its enforcement by criminal proceedings, and the earlier case of Smyth v. Ames[54] had enjoined proceedings by indictment to compel obedience to the Nebraska rate act; so that in applying the remedy of injunction to criminal as well as civil cases, upon the usual grounds of equitable jurisdiction, the Young case established no new precedent.

May we, then, not conclude that in its protection of legal rights against unwise and unjust provisions in the Minnesota rate legislation, in its reassertion of the supremacy of federal power and its enforcement of the constitutional guarantees of the fourteenth amendment, there is, as Mr. Justice Peckham said, nothing in the Young case

[52] 189 U. S. 218.
[53] 195 U. S. 223.
[54] 169 U. S. 466.

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"that ought properly to breed hostility to the customary operation of federal courts of justice in cases of this character?"

The annual output of American legislatures is said to be 15,000 laws. Over legislation and bad legislation are crying evils of the times. With states legislatures dealing with new and complicated legal and economic problems, usually without expert knowledge or experience, and with much popular (and often proper) hostility to great corporations, it is not strange that many defective and illegal acts are passed. The courts, both state and federal, are busily engaged in separating the wheat from the chaff. Of necessity and of right many acts are thus held unconstitutional and their enforcement prevented. Is it not possible that in unscientific methods of state legislation and in unjust unconstitutional enactments, drafted to appease popular clamor, rather than in judicial usurpation, is to be found the reason for much of the apparent increased control of state activities by the federal courts?

De Tocqueville, writing in 1832, said: "If the sovereignty of the Union were to engage in a struggle with that of the states at the present day its defeat may be confidently predicted; and it is not probable that such a struggle would be seriously undertaken. As often as steady resistance is offered to the federal government, it will be found to yield."

Happily, this prophecy did not come true, and that it was not fulfilled is due in no small measure to the jealous way in which the federal courts have safeguarded the authority and powers of the national government, of which the Young case is a conspicuous example. To have decided that case otherwise would have been in effect to limit the fourteenth amendment so as to make it read: No state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws, *unless it shall pass an act for that purpose, in which case the prohibitions of this amendment shall not be operative.*

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THE LAW OF THE CONSTITUTION.[1]

EDMUND M. PARKER.

The seventh edition of Professor Dicey's well-known volume presents, as its most notable feature, an entirely new chapter on the droit administratif. All the previous editions have contained a chapter with this heading, but the doctrines set forth have, within the last half-dozen years, aroused so much adverse criticism that Professor Dicey has reëxamined the whole subject anew and has restated his views in what now constitutes one of the most valuable chapters of a notable book.

The study of administrative law, as a branch of public law, has in recent years obtained increased recognition, and with this has come especial interest in the administrative law of France; for in that country the system has obtained its fullest development. There the evolution has been steady and although it has passed through several stages, is not yet completed. From the beginning of the nineteenth century France has had, for the determination of administrative litigation (the contentieux administratif, as it is termed) a system of special courts separate and distinct from the regular courts of the land. Other countries of continental Europe have more recently established similar courts, it is true, but in none of these is the jurisidiction of such courts as extensive as it is in the administrative courts of the French republic.

This comprehensive jurisdiction of the French administrative courts adds interest to the study of French administrative law, for as a result of it there exist more points of contact between the jurisdiction of those courts and that of the regular courts than is the case elsewhere, and hence it is that more opportunities are afforded for contrasting the decisions of the two sets of courts in France. Furthermore, French

[1] *The Law of the Constitution.* By Prof. Albert Venn Dicey. Seventh Edition. London, 1908.

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administrative law includes many subjects which in other countries are within the jurisdiction of the regular courts. From all points of view France is undoubtedly the best field for the study of this branch of jurisprudence.

It has often been contended by French writers on administrative law that a comparison of the decisions of their highest administrative court (the Conseil d'État) with those of their highest regular court (the Cour de Cassation), will demonstrate that in analogous matters the rights of the individual have received more ample protection against official pressure in the former forum than in the latter. This contention seems to be well-founded; and, furthermore, the American student who gives the subject sufficient attention will not fail to be convinced that in many cases he would seek in vain from the regular courts of his own country the enforcement or even the recognition of those private rights against governmental authority which are daily vindicated in the administrative courts of France.

Although the present system of administrative courts was established by Napoleon I, as Professor Dicey points out, the origin of administrative jurisdiction must be looked for in the royal prerogative of the old régime. We may today look upon administrative jurisdiction as judicial both in its nature and in its procedure, but in its origin it was doubtless extra-judicial and its basis was the exercise of an arbitrary prerogative. Indeed, if the matter be historically considered, this may be said of the whole judicial function in England as well as in France, for as is well known the jurisdiction of the court of king's bench, the chancery, the exchequer, and the judicial committee of the privy council are all, in their inception, but manifestations of the exercise of royal prerogative through the agents or ministers of the crown. The powers of each of the above-mentioned tribunals may be looked upon as having emanated from the crown as truly as the same may be said of the parliament of Paris or of the Grand Conseil under the old régime. The only historical difference between the ordinary and the administrative courts is that the latter have retained their administrative organization and have resisted the tendency to transform themselves into regular judicial bodies.

This tendency on the part of an administrative body to be transformed into a judicial tribunal we may see clearly in the United States.

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How often do we not see administrative boards or officials to whom are entrusted the decision of questions affecting rights of property required by the pressure of public opinion or even by law to adopt the procedure of a judicial body, and to take on all the paraphernalia of a regular court. In the course of time the decisions of such a body create a body of precedents for guidance in the settlement of causes, and when this stage is reached the process of transformation from an administrative board to an administrative court is completed and a body of administrative jurisprudence has been brought into being. The droit administratif of France is the result of just such an evolution. In its origin it was but the arbitrary action of the crown in determining through its own agents all questions in which the interests of the crown were involved; it has become a system of law administered in regularly constituted courts which are, however, still composed of administrative officials. It is worthy of note, moreover, that the system has transformed itself from one in which the interests of the crown and its officials were deemed paramount into a system which, in its actual operations, gives to the individual remedies against officialdom which in its absence he would not possess at all.

Administrative law is chiefly case-law; it has been made by those who administer it; it is therefore more flexible than code law and may be more readily adapted to new conditions. As one writer has said, "an administrative tribunal resembles a court in being able to formulate the rule of law best suited to a case, and resembles administration in being able to grant it." Professor Dicey is entitled to no small credit in having perceived, even more clearly perhaps than the French writers themselves, the tendency of administrative law to develop along this line. As one of their great writers on administrative law (Professor Hauriou) has expressed it, the French are indebted to him for having shown them how "la prérogative de l'administration doit logiquement avec le temps devenir la source d'un droit d'équité, et ainsi il nous a éclairé sur la veritable nature de notre droit administratif par rapport au droit commun."

Still it may be questioned whether Professor Dicey, in this his latest exposition, has not left some things to be desired. One may doubt, for example, whether in his account of the development of administrative law during the first half of the nineteenth century he quite

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does justice to the institutions of that earlier period. Thus in describing the functions of the Conseil d'État under Napoleon I he states that "even when acting judicially" it was "more of a ministry than of a court," and he illustrates this with an analogy from English history.[2] No mention is made of the fact that by the decree organizing the Conseil d'État on the 5 Nivose of the year VIII (the very first year of the consulate) it was expressly provided that those councillors who had charge of any department of the public administration should have no vote in the Conseil when it passed on any case connected with that department. Nor is anything said of the establishment in 1806 of the comité du contentieux, or judicial committee, within the Council and of this body's duty to examine all administrative cases which came before the larger organization, and also to prepare the drafts of the decisions. We have the opinion of Laferrière that this committee was the real organ of higher administrative jurisdiction, and of M. de Cormenin that it rescued the administrative jurisdiction from the gulf of arbitrary government. The Napoleonic legislation thus draws a sharp distinction between the functions of the Conseil d'État as a court and its functions as an organ of administration; and this fact renders Professor Dicey's English illustration quite misleading.

Again, in dealing with the second period in the development of French administrative law (1830–1870) Professor Dicey mentions that Englishmen will "learn with surprise that during the whole of these forty years few if any legislative or parliamentary reforms touched the essential characteristics of the droit administratif as established by Napoleon."[3] Now the fact is that the droit administratif of the Napoleonic era and of the Restoration was a secret, bureaucratic system. In cases to which it applied there was no public hearing, and no oral arguments of counsel were permitted. These features caused marked

[2] Thus the state of things which existed in France at the beginning of the nineteenth century bore more likeness to what would be the condition of affairs in England if there were little or no distinction between the cabinet as part of the privy council and the judicial committee of the privy council, and if the cabinet, in its character of a judicial committee determined all questions arising between the government on the one side and private individuals on the other, and determined them with an admitted reference to considerations of public interest or of political expediency. Pp. 344–345.

[3] P. 347.

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hostility to the whole system of administrative jurisdiction, and the government of Louis Philippe at the very outset of his reign made important reforms eliminating the objectional features in administrative procedure.[4] So important were these reforms that they greatly assisted the government in stemming the agitation for the abolition of the administrative courts and enabled it to secure a firm anchorage for the whole administrative system in the law of July 19, 1845. Laferrière indeed speaks of this law as one of the most important organic laws of the Conseil d'État, and in view of this change alone (and it was not the only change made during the period) it would seem hardly correct to say that the essential characteristics of Napoleon's system were almost untouched by legislative or parliamentary reforms during the period preceding 1870.

In Professor Dicey's earlier editions it was the arbitrary character of French administrative law which most impressed him. He seemed to feel that an administration acting as judge in its own causes and deciding matters in accordance (as he deemed) with the dictates of its own self-interest afforded an instructive contrast to "the rule of law" in England, and it was with the intention of defining more precisely the significance of this latter that the chapter on the droit administratif was given a place in his original volume. Deriving his impressions (as he frankly informs us) largely from the earlier writings of De Tocqueville, he failed to perceive the great change which the droit administratif had undergone since De Tocqueville wrote, and which rendered the latter's criticisms wholly inapplicable to the system in its later development. Droit administratif as originally conceived by Professor Dicey, was a system of official privilege, a scheme or device whereby the official was protected against the consequences of his own wrongful or negligent acts. His chapter as now recast obviously endeavors to do full justice to the equitable aspects of the contemporary administrative law in the French republic; but certain vestiges of his original misconception still remain, and these detract somewhat from his otherwise excellent résumé of the subject. He tells us very properly, for example, that the droit administratif is "case law," or "judge-made law." "The precepts thereof are not to

[4] The Ordinances of February 2 and March 12, 1831.

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be found in any code; they are based upon precedent."[5] But if this be accurate, is it fair to charge against system of droit administratif the special privileges and exemptions which are enjoyed by officials in virtue of statutory enactments such as Art. 114 of the Penal Code, and Art. 75 of the Constitution of the Year VIII?[6] This point is all the more worth noting, for Professor Dicey, in comparing the French and English systems of law contends that the public authorities protection act of 1893 and the "lot of acts extending from 1601 to 1900" should not be cited as examples of the existence of anything like administrative law in England although they definitely afford or have afforded to English public officials protection against suits at law.[7] If the existence of these English enactments be not material to a determination of the question whether or not administrative law has any place in English jurisprudence, why should the French enactments be considered as part of administrative law beyond the Channel, or how is it possible for constitutions and statutes to form part of a system of "case law or judge-made law?" If Professor Dicey would be just he must apply the same criterion of administrative law to both countries. If the administrative law of a country is only that law which is applied by the administrative courts, then it may be entirely proper to say that administrative law exists in France but not in England, for France possesses such courts and England does not. But if this be the test (namely the existence of a separate set of courts) then the French enactments to which Professor Dicey refers are no part of French administrative law, for they neither affect the jurisdiction of these courts nor would questions arising under them go to the administrative courts for determination.

On the other hand, if we take administrative law to be the whole body of jurisprudence governing the relations between officials and individuals, the enactments which protect the official from suits where private individuals are not so protected do certainly form part of it, and the English statutes which Professor Dicey cites do form a part, and a very material part, of the administrative law of England. The matter in fact has a practical as well as an academic importance. It is not a question concerning itself merely with the comparative value

[5] P. 369. [6] Pp. 342 ff. [7] P. 382, Note 2.

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of two definitions of the term administrative law; it is rather a question as to whether there exists such a fundamental dissimilarity between English and French methods that, by contrasting the two, one may render more impressive to the student the meaning of the "rule of law" in England. Professor Dicey insists on the idea that such a sharp contrast does exist and his desire to emphasize the differences between the two systems has perhaps led him at times to minimize or even to ignore their points of resemblance.

It is beyond question, for example, that each country has sought to protect its public officials from vexatious suits brought against them on account of the way in which they may have performed their public duties. The French at the outset employed to this end the device of requiring the consent of the council before a suit might be brought against a public official; now they substitute for the personal responsibility of the official (in certain cases) the liability of the state itself or of his official superior. The English device (as adopted in the public authorities protection act 1893) is to subject all claims of private individuals against officials to a very short statutory period of limitation, and to impose a heavy pecuniary penalty upon every unsuccessful plaintiff in such actions. The devices are not identical; their purpose is. But of this resemblance Professor Dicey takes no account.

In his earlier editions, again, Professor Dicey set forth the entirely inaccurate proposition that the system of administrative law in France had for one of its especial aims the protection of policemen from the consequences of their illegal acts, when as a matter of fact actions against policemen for illegal arrests are always brought in the regular courts and the administrative courts have not had the slightest relation to such actions. In the present edition these inaccuracies of statement have disappeared; but the ubiquitous policeman will not down, and, like the head of King Charles in a famous memoir, persists in reappearing at inopportune moments. In his new rôle the French gendarme is no longer the ward of the administrative courts but one of the officials sheltered by the ægis of the wicked Garantie Constitutionelle, the famous Article 75 of the Constitution of the Year VIII.[8]

[8] Les agents du Gouvernement, autres que les ministres, ne peuvent être poursuivis pour des faits relatifs à leurs fonctions, qu'en vertu d'une décision du conseil d'état; en ce cas la poursuite a lieu devant les tribunaux ordinaires."

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To this Professor Dicey frequently reverts.[9] Now the burden of the sins which this oft-quoted article (peace to its ashes; it was repealed, as Professor Dicey knows, no less than thirty-eight years ago) may properly be called upon to bear is indeed heavy enough without attempting to add thereto anything which does not belong to it; and the fact of the matter is that policemen (sergents de ville and gendarmes) were not among those "agents du gouvernement" who could take refuge under the protection afforded by this article, for the words "les agents du gouvernement" have never been construed to include policemen. So long as this article remained in force suits against policemen were brought in the ordinary courts and no permission from the Conseil d'État was necessary to bring them there.

Professor Dicey draws a most interesting parallel between that conception of the royal prerogative which was the basis of the droit administratif under the old régime in France and that theory of prerogative which the crown lawyers of the seventeenth century attempted to impose upon the English people. The parallel is entirely just, for there can be no doubt that both countries were fundamentally alike in their conception of the crown as the source of all justice. But Professor Dicey's further attempt to establish an analogy between the Article 75 already referred to and Bacon's writ, "De non procedendo, Rege inconsulto" would seem to be infelicitous. Article 75 applied only to suits against officials and was a device for preventing such suits without administrative permission. The writ, "De non procedendo, Rege inconsulto," on the other hand, was of far wider scope. It was, as Bacon assured the king "a means provided by the ancient law of England to bring any case that may concern Your Majesty in profit or power from the ordinary Benches to be tried and judged before the chancellor of England by the ordinary and legal part of this power." This would include any suit whatever in which the crown might happen to feel that its interests were involved, and would provide for the trial of all such causes before a special minister of the king (the chancellor), and not before the regular courts as would be the case when permissions were had under the terms of Article 75. The effect of Bacon's writ therefore seems much more like that of the "evocation" of the old

[9] See, for examples, pp. 343, 354–5 and 383, note 2.

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régime whereby causes were removed from the ordinary courts for trial before the royal council.

In conclusion it should be stated that Professor Dicey's new chapter on droit administratif now constitutes a very valuable feature of his *Law of the Constitution,* marking a distinct advance in this respect over earlier editions, and that the comparison which the author draws between the rule of law in England and the droit administratif in France, while at times somewhat strained, is on the whole instructive; although Prof. Dicey's thesis that the "rule of law" is the sam in England for contests between officials and individuals as for teose between private citizens would seem to be open to grave objecthons. By whatever name one may call it, England undoubtedly possiesses administrative law, in the sense of a special set of legal rules governing the relations between the administration and its officials and the private citizen and the contrast between the rule of law as between private individuals and the rule of law as between the government and the individual is one which may be drawn instructively in England, as indeed in any country. This is particularly true of the United States, for it must not be forgotten that the "prerogative of the administration" may exist and has actually existed in republics as in monarchies, as France during her great revolution found to her cost, and as we have often had occasion to learn in this country. In the study of the development of French administrative law the student of American institutions may find both instruction for the present and guidance for the future. In such study much assistance may be derived from a careful examination of Professor Dicey's new chapter. But to those who desire to inform themselves with comprehensiveness and accuracy on this subject this chapter should serve only as an introduction to the works of Aucoc, Laferrière, Hauriou, Bérthelèmy, and the other great writers on the modern administrative law of France.

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THE NEW YORK DIRECT PRIMARIES BILL OF 1909

BY ARTHUR LUDINGTON

The system of direct primaries for New York state proposed in the Hinman-Green bill[1] (Senate, Int. 722; Assembly, Int. 1219) and advocated by Governor Hughes contains certain features which have never been embodied in the primary laws of any other state. The friends of direct primaries in New York have been sharply divided in opinion as to the merits of these features, some considering them an unfortunate compromise, designed to win the support of the party machines, and others regarding them as marking an advance over any primary law heretofore enacted. An outline of the bill and of the discussion which it has aroused, may be of interest to students of direct primaries in other parts of the country who have not had occasion to follow the New York situation in detail.

[1] This bill was drawn up, at a series of conferences, by a committee composed of members of the Brooklyn Young Republican Club and the Brooklyn Republican county organization, members of the legislature from other parts of the state, and several other persons interested in the subject. It was introduced on March 19, and was referred in each house to the committee on judiciary. Few public hearings were held, and the bill was rushed to a vote against the protests of its introducers. It was reported unfavorably by the assembly committee on April 8, and defeated in the assembly on the same day by a vote of 112 to 28. It was reported unfavorably by the senate committee on April 14, and defeated in the senate on April 15, by a vote of 33 to 14. Just before the close of the session Senator George L. Meade introduced a resolution providing for the appointment of a legislative commission to investigate during the summer the workings of the direct primary system in other states, and the conditions in regard to primary elections in New York state, and to report to the next session of the legislature on or before February 1, 1910. As originally introduced, this resolution provided for a commission of eleven, three members of which were to be appointed by the governor, three by the lieutenant-governor, and five by the speaker of the assembly. It also provided for an appropriation of $20,000 to defray the expenses of the investigation. The senate finance committee amended the resolution by striking out the members to be appointed by the governor, and by reducing the appropriation to $10,000. In this form the resolution passed both houses, and the commission of eight members, of which Senator Meade is chairman, has been appointed, and has begun its investigation.

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The more novel provisions of the bill center about the method of proposing candidates for nomination to public office. Under most of the direct primary laws now in force the names of candidates for nomination are placed upon the official primary ballot by petition. Sometimes a declaration of candidacy by the candidate himself is all that is required—except for the payment of a fee, which is occasionally demanded under both systems. Under the Hinman-Green bill there will be two methods by which candidates for nomination may be proposed—or, to use the language of the bill itself, "designated"—and their names placed on the official primary ballot. The first method is by a majority vote of one of the party committees specially provided for in the bill; the second is by petition.

In order to present a clear idea of the system, it is necessary to begin with an outline of the provisions of the bill in regard to party committees. At present the size, make-up and procedure of these committees is left almost entirely to party rules. The more important of them are elected indirectly, while those which are elected directly at the primaries are chosen from large unit districts, and on ballots containing so many names that the voter is utterly unable to make an intelligent choice.[2] Under the Hinman-Green bill the average voter, in any part of the state except New York City, will vote for but *one* member of each of *three* committees—the state committee, county committee and judicial district committee.[3] None of the other committees provided for in the bill—such as the congressional district committee, the state senatorial district committee, etc.,—is to be separately elected at the primaries, but each will be made up from the members of the county committee (or committees) elected from the district for which the non-elected committee is to act. To prevent these committees from becoming self-

[2] For example, the democratic general committee of New York county was composed in 1908 of 7926 members elected from 35 assembly districts. The smallest number of members to be elected from any one district was 131, and the largest, 417.

[3] In two of the counties within New York City each voter will vote for a member of one additional committee, the city committee. In the other two counties within the city each voter will vote for a member of the county executive committee (which acts as the city committee in each of these counties) and for a member, or members, of the assembly district committee. This system, though somewhat elaborate, is considerably simpler than those now in use by the principal parties.

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perpetuating their members will not be allowed to nominate their own successors. The names of candidates for *committee positions* will be placed upon the primary ballot, not by committee designation, but only by petition.

Each party committee specifically provided for in the bill[4] may designate candidates for nomination to public office, within the district for which it acts, at a formal meeting to be held on or before the seventh Tuesday preceding the primary election.[5] These committee meetings will be open to the public, and their procedure will be carefully regulated by law. Each member will have a vote in committee proportionate to the party vote for governor in his district at the last preceding election, and candidates may be designated for nomination only by a majority of the votes which all the members of the committee, whether present or not, are entitled to cast.

At any time prior to the final date on which committee designations must be filed, and for three weeks thereafter, candidates for nomination to public office may also be designated by petition. In cases where the candidate proposed by the party committee is entirely satisfactory to the enrolled voters of the party no other candidates for the nomination are likely to be put up. Where the committee candidate is unsatisfactory, however, an easy method is provided for contesting the nomination. After the last date set for the filing of designations by petition four weeks remain for the primary campaign. The use of money in this campaign will be governed by the same provisions which now apply to general election campaigns, in so far as the latter are applicable. A special clause in the bill prohibits the use of party funds in behalf of any candidate for nomination.

It will be seen from this outline that the system proposed in the bill is virtually a referendum within the party on candidates proposed by party committees.[6]

[4] Any party may, by its own rules, provide for other committees, but only those provided for in the bill may designate candidates for nomination.

[5] As the latter will fall usually about the middle of September, this meeting would be held about the end of July.

[6] That some such system was developing of itself under the primary laws of other states was suggested last fall by Professor Merriam. (*Primary Elections*, p. 131.)

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The opponents of the plan fear that it will give the "organization" too much power; that independent elements within the party who propose candidates for nomination in opposition to those designated by party committess will be placed at a great disadvantage, since the committee candidates will be aided by the sentiment of "regularity," artificially preserved by the bill, while the opponents of the committee will be put in the position of "kickers." Nominations, they assert, will be dictated by the leaders more easily than at present. This criticism seems to overlook the fact that party leaders may take advantage of the sentiment of "regularity" (transferred from the party to the machine within the party) under any primary law, and that, given an otherwise equal contest, the opponents of the existing organization[7] stand to gain in the long run, from the enforced publicity of its action, fully as much in the way of an aroused and concentrated "independent" sentiment as it can itself gain from a mistaken feeling of "organization regularity."

The arguments in favor of the plan have been outlined by Governor Hughes as follows:[8]

"1. It provides opportunity for responsible and open consultation by elected representatives of the party voters.

"2. It permits proper consideration by these representatives, coming from all parts of a given district, of questions relating to geographical distribution of candidates.

"3. Those influential in party affairs will, in any event, have their candidates and their wishes will be known to their followers. Under

[7] Under the strict theory of the Hinman-Green bill it is incorrect to speak of a "machine" or "organization element," and of "independent elements," within the party, no such distinctions being recognized. Officially—and in time, it is to be hoped, actually—there will be only party members and party officers, neither of these classes being fixed or permanent, but members of one constantly changing places with members of the other. As a matter of fact, however, it can hardly be expected that present habits and present modes of thought will be immediately abandoned; and, for some time to come at least, there will be a strong tendency on the part of the public to consider the party officers at any given time, and their more active adherents, as "the organization," and a similar tendency on the part of these officers (many of whom will have been leaders under the present system) to act as if they *were*, not only the "organization," but the party itself.

[8] Speech before the Brooklyn Young Republican Club on February 20. Cf. his speech in Buffalo on March 27.

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the proposed plan party committees would be required to express their preference openly, and the origin of candidacies could be properly traced.

"4. Where the representatives of a party are actuated by honorable motives, and are true to its interests, they would be enabled to present candidates in a responsible manner, stating to the public the reasons for their choice.

"5. Where, however, party representatives are either corrupt or obtuse, and the candidacies are the result of deals or represent favored interests, they would be more readily marked and more easily opposed.

"6. It would tend largely to reduce the number of candidates. Probably many would be nominated without contest, for the fact that other nominations could be made by petition and that the final decision lay with the party voters would tend to insure the presentation by the committees of acceptable names and make opposition unnecessary and fruitless.

"7. On the other hand, if an unworthy man were presented the tendency would be to concentrate the opposition by uniting upon the strongest opposing candidate.

"It may also be supposed that where some names presented would be acceptable, and others not acceptable, the primary contest would practically be limited to the latter. This would have a powerful tendency to prevent unworthy nominations for minor places on the ticket.

"8. It would permit responsible fusion movements and allow representatives of party committees to confer together and with other citizens, and to agree upon the presentation of names.

* * * * * * * * *

"10 Finally, the principle of the choice of the party nominee by direct vote is not sacrificed. The direct vote is still necessary before the nomination can be made. But the principle is applied in a way which will guard against dangers now justly or unjustly feared.

"If experience proves that presentation of names by party committees is unwise, the next step will be a simple one, and this privilege of the committees can be taken away. In the mean time the party voters will have become accustomed to direct vote for party candidates and to the use of the machinery for direct nominations."

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The committee feature of the bill has the further merit of meeting the objection, often urged against the direct primaries system, that it does away with the advantages of consultation and deliberation offered by the convention system. Under the Hinman-Green bill there is opportunity for the fullest consultation and deliberation before the candidates are designated. At present the only real deliberation is not in the convention, but among the party leaders in private conference; and it is just this sort of deliberation that is preserved by the terms of the bill. Where the plan differs from the present system is in the fact that all suggestions made by party committees are subject to the approval of the party as a whole. They will be made, therefore, under a sense of immediate responsibility, and this responsibility will be strengthened by the fact that the members of party committees, if candidates for re-election, must submit themselves to the voters at the same time as the candidates for nomination whom they have proposed.

The Hinman-Green bill might well be known, therefore—to quote Governor Hughes again—as a plan to "provide for responsible party action." Its keynote is accountability on the part of party leaders toward party members; regulation, rather than distrust, of party organization. It seems to proceed upon the principle, not that every portion of the nominating process must of necessity be performed directly by the voters, but that, whoever performs it, *they* must actually and completely *control* it.

Closely connected with this plan of proposing candidates for nomination is the form of the official primary ballot. The latter will have two principlal compartments—one for the names of candidates for party positions, the other for those of candidates for nomination to public office. In the former of these compartments the names of all candidates for each party position will be arranged under the title of the position in the order in which the petitions proposing them are filed.[9] In the other compartment the names of all candidates for nomination to any public office will be grouped under the title of the office, the name of the candidate designated by the party committee

[9] It will be remembered that candidates for party positions may be nominated only by petition.

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being placed at the top, followed by those designated by petition in the order in which the respective petitions are filed. Each candidate, however designated, (or, where two or more persons are to be elected to any office, each group of candidates) will be given a distinguishing number, beginning with "No. 1" for the first name at the upper left hand corner of the ballot, and continuing consecutively. No distinguishing titles, however, such as "party committee candidate" or "independent candidate," will be allowed.

The provision that the names of candidates designated by party committees shall be placed first under the title of each office has met with more general opposition than that which merely authorizes party committees to designate candidates for nomination in an open and responsible way. It was known that Governor Hughes, in 1907, had vetoed a bill providing for an official primary ballot of the "party column" type, with a column for the regular "district committee" nominations (or, as they are more accurately termed in the Hinman-Green bill, "designations") and separate columns for tickets designated by petition.[10] There was considerable surprise, therefore, when, in his Brooklyn speech on February 20, he advocated an arrangement of names which seemed to many persons open to objections similar to those which he had himself urged against the 1907 bill. His own explanation of his position was as follows:[11]

"In the case of candidates for membership in party committees, for the reasons I have already given, no candidate or group of candidates should have any advantage by preferential position upon the ballot. In the case of candidates for nomination for elective offices, however, there are grounds which justify the presentation of names by party committees in the first instance. In this view it would not be improper, but would appear to be natural, to have such names

[10] The text of his veto message is, in part, as follows: "This bill in its preferential provisions for nominations by district committees and for the use of an organization or 'district' committee column on the ballot, distinctly favors those of any party who are in control. *The enrolled voters are not put upon an even footing. Instead of encouraging care and self-reliance in voting, the proposed form of ballot makes it easy to dispense with discrimination.* It is open to the objections I have urged to our election ballot, and its adoption as a feature of a plan of primary reform I regard as a serious mistake."

[11] Speech before the Brooklyn Young Republican Club on February 20.

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placed first under the respective offices. These names are the first in the field and are presented for the purpose of being supported or opposed according to the view of their merit or demerit. Other names, presented by petition, may appear in alphabetical order or in the order in which the petitions are filed.

"Whatever position any candidate may have upon the ballot, practical equality in the contest can be secured by numbering the names of the candidates consecutively from the top to the bottom of the ballot, so that each candidate will have a different number, no matter for what office he may be presented. This would include both the candidates presented by the party committees and the candidates named by petition, and it would furnish in a simple manner a corrective for disadvantages which might be supposed to inhere in any arrangement of names that has been suggested."

The *Citizens' Union* replied to these arguments as follows:[12]

"Any arrangement of names on the primary ballot which furnishes an artificial means of distinguishing those proposed by the party committees from those proposed by petition gives an unfair advantage to those in control of the party machinery. Not only would it be made easier to instruct all persons connected with, or dependent upon, the organization how to vote at the primaries, but it would tend to throw to the support of party committee candidates a large part of what, at general elections, is known as the 'straight-ticket' vote. Should the force of unreasoning habit be gratuitously made a permanent asset of the party committee candidates, to the disadvantage of all others?"

And further:

". . . . . the average voter will have no difficulty in discovering who are the party committee candidates. General knowledge of the candidates and of the sources of their candidacies will be disseminated by the campaign incident to the primary election. The educational benefit of such a campaign is rightly considered one of the chief advantages of the direct primary. It is better that all voters should be required to learn the identity of party committee candidates by such means than that many, following the line of least

[12] Pamphlet issued by the Citizens' Union, Supplementary Statement.

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resistance, should be encouraged to vote blindly for the 'organization' candidates, and thus virtually to abdicate to the party committees their right of choice."

Another objection to placing the names of committee candidates first in every instance is to be found in the distinct numerical advantage which this position has been shown by experience to confer. So clearly has this advantage been manifested[13] that during the past year several states have abandoned systems of arrangement which conferred it exclusively upon any one candidate, and have provided for the system of rotation already familiar in Minnesota, Michigan, Indiana, Oregon and North Dakota. Since, under the provisions of the Hinman-Green bill, it is particularly essential that the party committee candidates and those designated by petition be placed on terms of complete equality, there would seem to be even more reason in New York than in these other states for adopting the rotation system.

The arrangement of the names of candidates designated by petition in the order in which the petitions are filed is also to be criticised, since in the states in which this system has been tried it seems not to have worked satisfactorily.[14]

Several other features of the Hinman-Green bill, though they have aroused less discussion than those above mentioned, are of general interest to students of primary elections. One of these is the provision for party enrollment, which is made a prerequisite to participation in party primaries in all portions of the state. Those cities and villages in which the primary law of 1899 is in effect[15] have had for ten years, in connection with the personal registration system, the most thorough system of "personal" party enrollment of any in the United States. In certain counties where the town enrollment act of 1902 has been adopted by one or more parties, a simpler system of enrollment is in force for the members of these parties. This system does not require a personal application by the voter except for the correction of errors. In all other parts of the state there is no party enrollment whatsoever. The Hinman-Green bill will extend

[13] Senator La Follette computes this advantage at 20 per cent.

[14] Cf. Merriam, *Primary Elections*, p. 77.

[15] This law is mandatory for cities of the first and second classes (all over 50,000) and optional for cities of the third class, and for villages of 5000 inhabitants or over.

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the "personal" enrollment system embodied in the law of 1899 to *all* cities, and *all* villages of 5000 inhabitants or over, and will apply the simpler system of the town enrollment act of 1902 to all other parts of the state. Whatever arguments may be adducible in support of the "open primary," opinion in New York, among those interested in direct nominations, seems overwhelmingly in favor of the "closed primary," based upon party enrollment, as advocated by Governor Hughes.

For the canvass of the primary vote a novel plan has been devised to prevent any possible discrimination in favor of large cities as against rural districts. In the final count each district will be given a vote exactly proportionate to its vote for the party candidate for governor at the last preceding election. By this method the normal party vote of each district will be cast for the candidate successful therein, irrespective of light attendanec at any particular primary.

The method provided for framing the party platform, while possessing many advantages over the present system, is open to considerable criticism. As the bill now stands, this function will be performed by a "party council" consisting of (1) the party candidates for all offices voted for by the voters of the entire state, and (2) the state committee of the party. If the latter so decides, the chairmen of the 61 county committees will also be included. Counting the seven justices of the court of appeals, there are now 14 officers voted for by the voters of the entire state. As the members of the state committee may be chosen by congressional, senatorial or assembly districts, this committee may consist of from 37 to 150 persons. The party council, then, will consist of from 7 to 14 candidates for office,[16] and from 37 to 150—or, if the 61 county chairmen are included, from 98 to 211—party commmitteemen. This arrangement gives an entirely disproportionate share in the framing of the platform to the latter class, whose chief interest is not in party policies but in party machinery. It has the further disadvantage of including candidates for judicial office, who ought to be dissociated as far as possible from

[16] The seven state executive officers are elected every two years, but the term of office of the justices of the court of appeals is 14 years, so that it is hardly possible that more than one or two candidates for this office would be voted for at any one election.

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partisan politics, and of excluding candidates for legislative office, who, of all persons, will have the most to do with enacting the policies of the party platform into law. Both these objections could be met by including in the council the candidates of the party for senate and assembly—201 in all—and excluding judicial candidates. If it were desired to give the candidates a clear majority over the committeemen, the county chairmen could be excluded, leaving the "organization" represented only by the state committee. Either arrangement would be more appropriate than that now proposed.

In other respects the Hinman-Green bill resembles closely the primary laws now in force in other states. Nominations may be made by a plurality, there being no provisions for "second-choice" votes, and no stipulation that, in case the plurality candidate fails to obtain a specified percentage of the total vote cast, the nomination shall be made by a second primary or by convention. The method of conducting the primary election is approximated as closely as possible to that now familiar at general elections.

The bill applies only to parties which at the preceding gubernatorial election polled at least 10,000 votes for governor. All other parties or independent bodies, including organizations formed solely for the election of city officers, will continue to nominate by petition as heretofore. The bill governs the nomination of all officers to be voted for at the November election in any year, except presidential electors, town and village officers, and school-district officers. It excludes United States senators.

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NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

Campaign Expenses a Public Charge. Most of the states enacting direct primary laws have provided that the expense of holding primary elections and providing ballots therefor shall be in whole or in part a public charge. Several states have recognized the public character of campaign contributions and expenditures by surrounding them with wholesome legal restrictions and prohibitions. Oregon prints and distributes campaign literature partly at state expense. But Colorado is the first to recognize party campaign expenses as a legitimate public charge by appropriating public funds for that purpose. The act declares that "the expenses of conducting campaigns to elect state, district, and county officers at general elections shall be paid only by the state and by the candidates" Contribution by any other person or corporation to or for any party committee or any candidate for such offices, and also the acceptance of any such contribution, is made a felony punishable by imprisonment in the penitentiary for a term not exceeding two years, or a fine not exceeding $5000 or both. Candidates for salaried offices may contribute and expend in the aggregate not to exceed 40 per cent of the first year's salary of the respective offices; those for fee offices, not over 25 per cent of the fees for the last calendar year. The state is to contribute to each political party twenty-five cents for every vote cast at the last preceding election for its candidate for governor. There is no definition of what constitutes a political party, nor any provision for a new party movement, or organization that has not yet had any candidate for governor. The state treasurer is to pay the entire amount due each party to its state chairman, who is to distribute one-half of it among the various county chairmen according to the party vote in their respective counties. Each state party chairman is required to give a bond, equal to the amount he receives, and approved by the state treasurer or governor, guaranteeing the expenditure of one-half of such funds for "legitimate campaign expenses," and the distribution of the other half to the county chairmen. Within thirty days after the election he is to file with the state treasurer a sworn and detailed report of his expenditure of the state's contribution, but no penalty is provided in case of failure to do so. LEON E. AYLSWORTH.

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Civil Service—Canada. A new civil service act went into effect in the Dominion of Canada, September 1, 1908. Its enactment was the product of an exhaustive investigation made by a commission appointed in May, 1907. The civil service of Canada has been investigated several times by government commissions and enactments touching various phases have been made from year to year. The results have been, however, far from satisfactory. The Canadian civil service is divided into two parts, the inside service, or the department at Ottawa, and the outside service, which includes all other officials who do the work of the central government outside of Ottawa. The larger part of the outside service has never been brought under the civil service act, but has remained as party spoils. From the reports of the commission, it appears that the act as applied to the inside service was largely disregarded. The new law establishes a civil service commission of two members appointed by the governor in council whose whole time must be given to the work. They are required to pass upon the qualification of candidates, investigate the working of the act and perform other duties which may be assigned to them. The commission appointed to investigate the civil service was authorized to investigate particularly the inside service—the departments at Ottawa, but was given discretionary power to investigate the outside service. The topics which were specially mentioned for inquiry were: the general operation of the act, classification of the service, salaries, temporary employment, technical employees, promotion, discipline, efficiency of departmental staffs, retiring allowances, and other matters in the discretion of the commission.

On the general operation of the civil service act, the commission reported adversely, quoting a passage from the report of 1892 which expressed the hope that if the recommendations of the commission were carried out, great benefit would result to the public service. The commission said: "The provision of the civil service act and its amendments have not made the service any better; in fact the act has been so amended, reamended and whittled down, that the public service not only at Ottawa but elsewhere throughout the Dominion has fallen back during the last fifteen years . . . . It is the political element in the act which has tended to deteriorate the public service . . . . the great prosperity of the country during the last fifteen years has been such that able men who were formerly attracted to the service of the state have now ceased to look to the rewards of that service . . . . with the result that inefficient and inferior men, unable to obtain better

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positions in the outside world through political operation and other means have been brought into the service." This was said in reference to the inside service. The outside service which had grown up largely outside of civil service regulation was pronounced very bad, politics entering into every appointment and promotion, and being of more importance than the public interests of the Dominion.

The commission recommended that the outside service be brought under the same regulation as the inside service, but the law failed so to provide though it was left in the power of the governor in council to bring the whole or any part of the outside service under the provision of the new law.

The classification of the service was an important part of the commission's work. Through years of lax methods anomalous classifications had grown up in the various departments. A complete and uniform classification was recommended and was adopted for the inside service.

In the matter of salaries, the commissioners reported for better classification and for increases wherever possible. They had a table prepared showing the relative cost of living in 1892 when the salary schedules were adopted and in 1908, and by that means pointed out the inadequacy of salaries. The law classified the offices and fixed maximum and minimum salaries for the inside service. Temporary employment as a means of circumventing the civil service law was severely scored by the commissioners. They found that temporary clerks are admitted to the service and remain until their death and that some temporary employees at Ottawa had been in the service for thirty or forty years, sometimes disguised under the designation "labourer." This evil was corrected by the law which requires temporary help to be certified by the civil service commission and limits the term of temporary clerks to four months in any one year.

The commissioners advocated liberal provision for the selection and pay of technical officers and employees because of the enlarging needs for trained persons. They suggested that rigid rules would be inadequate and that each case should be dealt with on its separate merits. The law follows their recommendation by providing that when the deputy head of a department certifies that professional, technical or peculiar requirements are necessary for a particular position, the governor in council may fill the place without competitive examination but the person must be certified by the civil service commission.

The commissioners declared that the promotion examination provided for by law had been disregarded and all sorts of devices of politics used

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for promoting favorites. The law attempts to remedy these defects by requiring promotion to be made for fitness from lower divisions. The qualifications of applicants for promotion must be determined by the civil service commission.

Recommendations were also made in regard to discipline, retiring allowances and probation. Reasonable assurance of permanency of tenure was advocated but no specific provision was made. A probationary period was fixed according to the recommendation but retiring allowances did not appeal to the law makers.

The law prohibits partisan work and influence in obtaining appointments. It provides for a department record of efficiency of all employees below the first division. The civil service commission is given rather wide powers of investigation, being authorized to investigate and report upon the operation of the civil service act and upon request o the head of a department and, with the approval of the governor, may investigate and report upon the organization of the department. This was in part the recommendation of the commissioners. The law carries out a large part of the commissioners' recommendations. It fails however in a few vital points, chief of which is the failure to include the outside service. JOHN A. LAPP.

The Constitutional Union of South Africa. South Africa, the third great group of self-governing British colonies, is in process of unification. While perhaps brewing for a considerable period in men's minds, the first definite beginning of the movement toward union dates from November 28, 1906, when the government of Cape Colony, expressing the belief that the troublesome railway and tariff questions between the different colonies could not be satisfactorily adjusted except as parts of a much broader scheme of political union, requested Lord Selborne, the high commissioner, to "review the situation in such a manner that the public may be informed as to the general position of affairs throughout the country." Lord Selborne, after correspondence with the governments of the other colonies, submitted (January 6, 1907) a report to the secretary of state, which, printed in a Blue-book entitled Papers Relating to a Federation of the South African Colonies, constitutes a most notable state paper and a very able argument in behalf of union. In May, 1908, an intercolonial conference was assembled at Pretoria to discuss the differences between the colonies regarding railway-rates and to revise the customs-union and to provide for its renewal. This conference recognized that a permanent adjustment of these ques-

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tions could only be reached through a political union of the colonies, and passed a resolution in favor of such a scheme. A temporary agreement was entered into concerning the matters in dispute; and the delegates returned to their respective colonies pledged to urge the larger policy upon the attention of the various parliaments.

These bodies proved completely sympathetic toward the movement and resolutions affirming the desirability of a closer bond were passed in every colonial parliament. Delegates were appointed by the four colonial governments to a constitutional convention which assembled October 12, 1908, at Durban, but was later adjourned to Cape Town.

The proceedings of the convention were conducted in secret. The speeches and debates are reported to have been of a very high order; the general friendliness among the delegates of the different races and of different colonies and their willingness to compromise were disclosed on every hand. There was no coercing of minorities, and consequently the final results were acquiesced in with practical unanimity. The convention gave evidence all the way through of a very high type of statesmanship. Four months were required to perfect the draft act of union, the convention completing its labors on February 9.

The four colonial parliaments assembled to discuss the proposed constitution on March 30. The Transvaal accepted it in both houses after brief debate and without divisions. Orange River Colony also immediately adopted it but with a few minor amendments. The parliaments in Cape Colony and Natal debated it for several weeks and finally adopted it only with important amendments.

The second constitutional convention convened on May 3 and, like its predecessor, debated behind closed doors. It amended the constitution in two important particulars: proportional representation, which is provided for by the original draft, is abandoned except for the election of senators and members of the executive committees of provincial councils; and any future modification of the electoral law or the law in regard to provincial councils, it is now provided, must receive the king's assent. Some further amendments of minor importance were also accepted.

It was originally proposed to submit the constitution to the colonial parliaments in June for final adoption, and as soon thereafter as possible a delegation was to proceed to England to facilitate its passage through the British parliament. But the Natal government has provided for a referendum which may delay its acceptance there too late for it to be

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submitted at the present session of parliament. Should Natal, which is least enthusiastic about the union, finally reject the constitution, as there is indeed some possibility, this will not prevent the others from consummating it. Her position of isolation would eventually compel Natal, as similar circumstances compelled Rhode Island and North Carolina, to throw her lot in with her sister colonies.

There is much in the events now transpiring in South Africa which reminds the student of American history of the critical period in which our own fundamental law was framed and adopted. Both instruments bear on their face the evidence of compromises on many important conflicts of interest which threatened in each case at times to frustrate the efforts toward union. The issue is even yet not settled in South Africa; the final adoption by all four of the colonies, while altogether probable, is by no means assured.

The provisions of the fundamental law by which it is proposed to consolidate the four self-governing British colonies of South Africa under one general government, and thereby lay the constitutional basis for a great Afrikander nation, are best studied in comparison with the constitutions of Canada and Australia, from which it has directly borrowed much, and with that of the United States, which has served as the ultimate model for all three. The tendency toward economic and industrial concentration, becoming ever more pronounced, which in the United States is impelling a centralization of government by the extremely laborious and unsatisfactory method of judicial interpretation, is manifested in these three groups of British colonies in the progressively enlarged powers which have been conferred upon the central government. The federal government of Canada not only enjoys important specific powers which the constitution of the United States has left to the several states, but the principle of residual authority has been just reversed there, the central government possessing all these powers which are not conferred in terms upon the provinces. In Australia, it is true, the residual powers are left with the states, but the enumeration of powers conferred upon the commonwealth is so exhaustive as to endow it in fact with even larger authority than the Canadian central government possesses. In the draft constitution for South Africa this tendency toward centralization is pushed a long stride farther by abandoning the federal type of government and uniting the four colonies into a consolidated union. The unitary character of the proposed government, it is true, is somewhat disguised, the colonies retaining in the form of provinces very important functions, and for a term of ten years being

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protected from serious encroachment on the part of the central government. Their complete ultimate dependence upon the government of the union, however, which possesses, not merely, as in Canada, the right of vetoing specific acts of legislation, but also the power to completely alter by law the organization of their governments and to denude them, if it chooses, of the prerogatives with which the constitution for the time-being endows them, leaves them in effect merely important divisions for local government.

That the South African colonies, so recently the scene of a bitter racial war, should prefer a unitary to a federal form of government seems at first indeed strange. Paradoxical as it may appear, however, this close union has been facilitated by the struggle so fresh in everyone's memory. The war was fought along racial lines which do not coincide with colonial boundaries. In every colony there was a British and a Boer party. The union of Britons throughout the entire area, on the one side, of Boers on the other, had a most important influence in developing a broader national consciousness on the part of each. For the time-being colonial lines sank out of sight, and they have never since been so strong as before. The men who are engaged in the work of constructing this new government are those who were most active in the recent conflict. There they learned to look at politics from the point of view of all South Africa. With the issue of the struggle settled definitively, and the wounds well-nigh healed by the generous grant of responsible government to the Transvaal and Orange River Colony, there is no insuperable difficulty in the way of union. Boer and Briton can both approach the problem devoid of the narrow particularism of ante-bellum days.

South Africa constitutes one physiographical unity in which the center of natural resources and of population—if not at present, certainly in the near future—lies far in the interior. Johannesburg and Kimberley are the focal points of commerce and industry and the sources of wealth. The interdependence of these mining centers and the rest of the country is very close and intimate. Colonial boundary lines constitute no natural barrier; the economic and physiographical factors strongly tend toward unity. The prevailing Afrikander sentiment was well expressed by Mr. Merriman, the Cape premier, who is reported to have said that they did not want in South Africa such a bundle of "jangling, wrangling states" as is found in Australia.

Like the constitutions of the other self-governing colonies that of South Africa will be embodied in an act of the British parliament; but unlike the British North America act, it is capable of amendment by the parlia-

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ment of the union; and unlike the commonwealth of Australia constitution act (which permits amendment without reference to the British parliament, the amendment of the South African constitution requires no other or different procedure than an ordinary law. In other words, South Africa is to have a flexible instead of a rigid constitution. The only exceptions to the general rule above stated, other than those which are limited to a period of ten years, are the sections which guarantee the natives in Cape Colony in their right to the suffrage and which place English and Dutch on an exact equality as the official languages. Changes in these two provisions can only be effected by the two houses sitting together and agreeing to them by not less than two-thirds of the total number of members of both houses.

Like all the self-governing colonies, South Africa will have a parliamentary type of government, in which ministerial responsibility to the representative body constitutes the central feature, although no provision is made in terms for this institution. The executive power is nominally vested in a governor-general, appointed by the British crown, and receiving from the union a salary of £10,000 a year, and an advisory executive council, appointed by the governor-general, and holding office during his pleasure. In fact, practically all executive power will lie with the ministers, who are limited in number to ten. After the first general election no minister may hold office for longer than three months without becoming a member of one or other of the houses of parliament. Ministers will enjoy the right, which French ministers possess, of appearing and speaking in both houses.

The legislative power in the union is vested in a parliament, which shal be summoned annually, consisting of senate and house of assembly. The governor-general possesses the usual powers of convening, proroguing and dissolving the two houses of parliament, or he may dissolve the lower chamber alone. It is provided, however, that the senate shall not be dissolved within ten years of the establishment of the union, and that any subsequent dissolution shall affect only the elected, not the nominated, senators. Each chamber shall select its own presiding officers and make its own rules of procedure. The qualifications common to members of both houses are: (a) being a registered voter for members of the house of assembly in one of the provinces; (b) having resided for five years in the union; (c) being a British subject of European descent. In addition senators must be at least thirty years of age, and elected senators must be the registered owners of immovable property in the union of at least £500 clear value. The following classes of persons are

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disqualified: (a) those who have within five years suffered imprisonment for serious crimes, unless freely pardoned; (b) unrehabilitated insolvents; (c) insane persons; (d) persons holding offices of profit under the crown, within the union, excepting ministers of state for the union, pensioners of the crown and members of the naval or military forces of the empire on retired or half pay, or whose services are not wholly employed by the union. Members of each house receive an allowance of £400 (£300 in the original draft) a year, from which £2 is deducted for each day's absence.

The provisions in regard to the senate are perhaps the least satisfactory of any in the constitution. This chamber is to consist of an elective and a nominated element. The former consists of eight senators chosen from each province, originally by the legislature of the colony, but afterward by the provincial council combined with the members of the house of assembly from the province. Thus the members of the lower house have a voice in selecting those of the upper. The utilization of the principle of indirect election in the choice of senators is manifestly suggested by the United States' constitution, since it appears in none of the other self-governing colonies. It is certainly remarkable that this particular feature of our constitutional law, which more than any other is subjected to general criticism, and which is in several states now circumvented by laws providing for a popular mandate, should commend itself to the framers of the South African constitution. The nominated element consists of eight senators appointed by the governor-general in council, one-half of whom shall be chosen on account of their acquaintance with the reasonable wants and wishes of the colored races in South Africa—a manifestly wise and important safeguard. The term of senators is ten years. The federal principle comes most nearly to expression in the construction of the senate, in which the provinces are represented equally. It may be safely predicted, however, that the senate will, like most upper chambers, not seriously threaten the predominance of the more popular body. The long term of its members will deprive it of that close connection and sympathy with public opinion which is nowadays so indispensable to a legislative body; while its lack of all control over financial legislation, entirely uncompensated by executive or judicial functions or by control over appointments, will still further diminish its powers. Ministers, it may be presumed, will recognize a responsibility only to the house of assembly. The South African senate may not sink into the position of complete insignificance which the wholly nominated Canadian senate occupies, but it can scarcely be

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expected to maintain an importance equal to that of the Australian upper chamber which is elected directly by the people for six years.

The house of assembly will be chosen by "the voters of the union" for a term of five years, and will number in its original composition 121 members, of which the Cape is assigned 51, Natal 17, Transvaal 36, and Orange River Colony 17. Provision is made for an automatic redistribution of seats every five years on the basis of a quinquennial census of male adults of European descent. The number of members assigned to any province shall not be diminished, however, until the total number of members reaches 150, which number shall thenceforth remain fixed, unless parliament otherwise provides. In the original assignment it is to be noted that Cape Colony has not been given her just proportion of members, while Orange River Colony and especially Natal enjoy a disproportional advantage. A strict adherence to the principle of numbers of male adults of European descent would give Cape Colony 58, Natal 12, Transvaal 37, and Orange River Colony 14.

The powers of parliament, as has been indicated, are of the broadest character. Money bills must originate in the lower house and may not be amended by the senate, which is, moreover, forbidden to amend any bill so as to increase any proposed charges or burden on the people; but "tacking" is made practically impossible by the provision that the regular appropriation bills shall deal only with such appropriations. An endeavor has been made to prevent deadlocks between the two houses in a provision copied, in a modified form, from the Australian constitution. When the senate fails to concur in any measure passed by the house in two successive sessions, the governor-general is empowered to convene a joint sitting where the two houses may deliberate and vote together upon the bill; amendments may be offered and accepted; and if finally the measure receives the assent of the majority of the members present of such joint sitting, it shall be considered as having duly passed parliament. As in the other British colonies, acts passed by the legislative body may receive the governor-general's assent, be vetoed by the governor-general, or reserved for the king's pleasure. The king may also disallow any law within one year after it has been assented to by the governor-general, which operates at once to nullify it.

The problems connected with the organization of the electorate were among the most difficult to settle. In the Cape Colony, where a broad suffrage exists in which many natives are included, views in regard to the franchise qualifications prevail which the northern colonies will not tolerate for a moment. Cecil Rhodes' principle of "Equal rights for all

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civilized men" has even proved too liberal. The difficulty of harmonizing the divergent opinions upon this vital question was finally overcome by a wise compromise which permits the parliament, when organized, to prescribe voting qualifications, but safeguards native rights by forbidding the disqualification of any person in Cape Colony who is, or may be, entitled to the suffrage under the laws of the Colony existing at the time of the union, unless the law embodying such disqualification shall be passed by the two houses sitting together by a two-thirds majority of all members of both houses. Moreover no person who is a registered voter in any province at the time of the establishing of the union shall be removed from the register by any disqualification based on race or color. This compromise commends itself as eminently fair and just, the more so as the radicals in both parties vehemently oppose it.

In order to avoid the possibility of a gerrymander in the laying out of the electoral districts—an imminent danger in view of the fact that the Boers for the most part predominate in the rural sections of the country while the British are chiefly massed in the cities—an elaborate scheme has been worked out for a commission consisting of judges of the supreme courts of the various colonies, nominated by the several governors in council whose duty it shall be to divide each province into electoral divisions. According to the first draft of the constitution each electoral division (except in special cases of sparsely populated areas where a less number might be permitted) was to return three or more members to parliament. In electing these a system of proportional representation by means of the single transferable vote was to be instituted. This provision has now been struck out, and the electoral divisions, as at present proposed, will be single-member districts. In laying out the electoral divisions the commission is instructed to give due consideration to: (a) community or diversity of interests; (b) means of communication; (c) physical features; (d) existing electoral boundaries; (e) sparsity or density of population. While taking the quota of voters derived by dividing the total number of voters in the province by the numbers of members in the Assembly assigned to it as the basis of division, the commission is permitted, when they deem it necessary, to depart therefrom either more or less not exceeding 15 per centum. After each quinquennial census a similar commission consisting of three judges of the supreme court of South Africa is to redistrict the provinces.

The supreme court of South Africa will consist of an appellate division and of the several divisions in the different provinces, each of the existing colonial supreme courts being constituted as a division of the supreme

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court of South Africa. The appellate division will consist of the chief justice of South Africa, two ordinary judges of appeal (these being unattached to any provincial division), and two additional judges of appeal, who are from time to time assigned to the appellate division from any of the provincial divisions by the governor-general in council, and who continue to perform their duties as judges in their respective divisions when not in attendance upon the appellate division. All judges of the supreme court serve during good behavior and are removable only on an address by both houses of parliament. It is provided that: "There shall be no appeal from the supreme court of South Africa or from any division thereof to the king in council, but nothing herein contained shall be construed to impair any right which the king in council may be pleased to exercise to grant special leave to appeal from the appellate division to the king in council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but bills containing any such limitation shall be reserved by the governor-general for the signification of His Majesty's pleasure." From this it is apparent that South Africa, like Australia, proposes to limit appeals to the judicial committee to the narrowest limits. Only in matters in which general imperial interests are directly affected, it may be presumed, will appeals to London be permitted.

The questions of finance and railways, which were the inciting cause to the union, were settled with unexpected ease. The permanent financial relations between the union and the provinces are left to the union parliament to settle finally, after a thorough inquiry into all the questions involved has been made by a special commission presided over by an officer of the imperial government. The railways, which in South Africa are in nearly every case state-owned, and the harbors are to be all transferred to the union government and managed by a board of three commissioners, holding office for five years, and constituting a department of the administration under the control of a minister. Guarantees are introduced to prevent their being administered for the benefit or disadvantage of any community.

Native affairs within the union will henceforth be in the hands of the central government which will pursue, it is hoped, a broader, more satisfactory policy than the separate colonies have been capable of hitherto. The native protectorates remain for the present under the administration of the high commissioner as the direct representative of the imperial government. The constitution provides, however, that the king in council may, on address of both houses of the South African

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parliament, transfer them or any other territories under British sovereignty, not originally incorporated in the union, to the government of the union in accordance with terms laid down in a schedule appended to the constitution. These appear to offer sufficient guarantees that the principles of administration, hitherto in force, will be continued.

The original name of Orange River Colony is to be revived; it will henceforth be known as Orange Free State. The proposal of this change, emanating from Doctor Jameson, is certainly significant of the prevailing good-feeling and absence of all rancor for old scores.

One of the most difficult questions to settle was that of the capital. The importance of the issue was largely sentimental, but for that very reason more difficult to compromise than questions in which much greater material interests were involved. Pretoria and Cape Town were the two rival cities for the seat of government. Neither would forego its claims, and it seemed for a time that the union itself might be wrecked on this single question. At the very end of the convention a compromise was agreed to by which Pretoria is to become the seat of the administration, while Cape Town is to be the meeting-place of the parliament; the appellate division of the supreme court is to be located at Bloemfontein. *Punch* offers the inhabitants of South Africa the consolation that this arrangement of three capitals is not after all so bad as if their new government were "to be at Pretoria on Mondays, Wednesdays and Fridays, at Cape Town on Tuesdays and Saturdays and at Bloemfon ein on Thursdays and Sundays." WALTER JAMES SHEPARD.

Election of United States Senators. The "Oregon Plan" of providing for the actual popular election of United States senators has been adopted by Nebraska. This action is not a radical innovation, but merely the last in a series of steps designed to bring the choice of these officials under popular control. The Nebraska constitution (adopted 1875) authorized the legislature to "provide that at the general election immediately preceding the expiration of the term of a United States senator from this state, the electors may by ballot express their preference for some person for the office." Such a provision was duly incorporated in the general election law enacted in 1879. In 1904 and 1906 senatorial candidates were nominated by state party conventions in advance of the legislative campaign, and the majority party in the ensuing legislature elected its candidate on the first ballot. In 1907 a direct primary law was enacted which substituted nomination by the people for that by convention. Hence, with provisions for direct party

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nomination and a popular vote on different party candidates only one step remained, namely, to supplant the pledge, implied or explicit, to vote for the party choice, by providing by law that any legislative candidate may make a definite pledge to vote for the people's choice without regard to his individual preference. No candidate is legally required to make any pledge. But any candidate for legislative nomination may file with his application to have his name placed on the official primary ballot a statement to the effect that he will if elected "always vote" for the people's choice for senator, or that he will consider the vote of the people as "nothing more than a recommendation." If a candidate files the former statement there is printed on the ballot after his name the words "promises to vote for people's choice for United States senator"; but if the latter, the words, "will not promise to vote for people's choice for United States senator." The rest is left to public opinion. LEON E. AYLSWORTH.

Elections Non-Partisan. Nebraska has enacted a law providing for the non-partisan nomination and election of all judges—county, district, and supreme, of state and county superintendents of public instruction, and of regents of the state university. Candidates for these offices "shall not be nominated, endorsed, recommended, censured, criticised, or referred to in any manner by any political party, or any political convention, or primary, or at any primary election." They are to be nominated by petition only. The nominating petition of a candidate for supreme judge must have at least 5000 signatures with not more than 500 from any one county; that of a candidate for state superintendent or district judge 1000 signatures; and for county judge or superintendent, 200 signatures. Every elector must "add to his signature his place of business, his residence, and address." These signatures are required to be verified by one who will take oath that he saw the various individuals sign and knows them to be qualified electors.

Provision is made for a separate "official non-partisan ballot." The names of candidates are to be arranged under the various offices and rotated "in as equitable a manner as may be practicable." No party name or designation is to be given any candidate. Nothing whatever may appear on the ballot except the official heading, the offices to be filled, and the names of candidates with their postoffice addresses.

The act further declares it "to be the purpose of the people of Nebraska to remove all of said offices entirely from the domain of partisan politics"

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and hence any person now holding one of these offices or hereafter elected thereto is made "ineligible to nomination or election to any office upon any party ticket" prior to the expiration of his term.

LEON E. AYLSWORTH.

Income Tax. Two income tax bills have been introduced in the United States senate. Both are proposed amendments to the house tariff measure under consideration, and aim to supplement the revenue derived from custom and internal duties.

This is not the beginning of income tax legislation in the United States, but hitherto the tax has always been employed in times of financial stress and stringency, and not as a source of revenue in times of peace and prosperity.

The first series of income tax acts were measures passed to relieve the nation of its financial embarrassment, brought on by the Civil War. The law was passed, repealed, reenacted and amended several times during the decade between 1860 and 1870. It can hardly be said that the changes were minor, or that the same idea ran through all of the laws. In some of the measures no attempt was made to get beyond the individual in the collection of the tax, while in others provision was made for the collection of the revenue at the source. The rate was now proportional, now moderately progressive, and again the progression was marked. No definite, uniform principle seemed to prevail, and the whole income tax legislation partook of the nature of an experiment.

The first act passed in 1861 provided for a tax of 3 per cent on all incomes over $800 whether received from trade, property, profession, vocation, or employment. Incomes below that amount were not taxable. The rate varied with the nature of the source and the jurisdiction of the recipient. The rate on incomes derived from treasury notes, or other security of the United States, was to be but 1½ per cent, while incomes, rents, or dividends derived from, or accruing upon property, securities, or stock owned in the United States by citizens abroad were to pay a tax of 5 per cent. In estimating the income, all national, state or local taxes levied upon property from which the income was derived were to be deducted.

Even before the law of 1861 became operative, modifications were added, and a progressive rate imposed; the classifications, however, were not minute. Incomes exceeding $600 but less than $10,000 were made subject to a tax of 3 per cent, and incomes exceeding $10,000 to a

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tax of 5 per cent upon the amount over the exemption allowed. Under this law provision was made for the collection of the revenue at the source and the individual was authorized to deduct from his income the taxes that had already been levied upon his salary, dividends, stock or interest, if that tax had been paid by the corporation.

In 1864 the law was again amended, and the rate made more progressive. Incomes exceeding $600 but not exceeding $5000 were made subject to a tax of 5 per cent. Incomes exceeding $5000 but not exceeding $10,000 to a tax of 7 per cent, and incomes in excess of $10,000 to a tax of 10 per cent. The attempt to collect the tax at the source was approved and continued.

The following year the law was again amended and instead of the fourfold classification of income, as formerly, only three were used: those under $600, $600 to $5000, and over $5000. Incomes of the first class—those below $600—were exempt, as usual, incomes of the second class were made subject to a tax of 5 per cent and incomes of the third class to a tax of 10 per cent. The law was complicated by numerous deductions and specific statements of just what incomes and parts of incomes should be included, and what excluded.

In 1867 the time during which the measure was to continue in operation was limited, and in 1870 the law was actually repealed.

In 1894 the income tax was again introduced with the intention of making it a part of the federal revenue system for at least five years, the beginning to be made the following year. The tax was to be proportional, and not progressive; the exemption was fixed at $4000 and the rate at 2 per cent. The levy was to be upon all gains, profits, and income received during the preceding calendar year, and collected from every citizen of the United States, whether he resided at home or abroad, if his income exceeded the exemption allowed.

Interest on notes, bonds and other securities, unless the bonds were national securities; profit realized from the sale of real estate purchased within two years previous; the amount of all premiums on bonds, notes or other coupons; the amount of sales of certain enumerated farm products, less the amount expended in the purchase or production of such stock or produce, and not including the portion consumed by the family; money and gifts acquired by gift or inheritance; and any other gain, profits, or income derived from any other source whatever, were all to be included by the individual in estimating his income.

Provision was also made for the exclusion of certain parts of the gross income. The following items were included in this list; necessary

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expenses actually incurred in the occupation or business; interest on existing indebtedness; other taxes paid within the year; losses incurred in trade, or arising from accidental losses not covered by insurance. These allowed deductions, however, did not include amounts paid out for permanent improvements. Any corporation for profit might pay a 2 per cent tax on its net profits, and by such payment relieve its stock and bond holders of their responsibility as individuals.

Such, in brief, has been the history of the law, up to the present date. Now comes a time when congressmen who stand for tariff for revenue only, congressmen who are working for a real revision of the tariff downward, and reformers who are advocating reform in our present tax system, are working more or less in harmony for an income tax in some form.

Of the two bills before the senate, one was introduced by Senator Bailey, and the other by Senator Cummins.

The one introduced by Senator Bailey provides for an income tax to be levied upon all individuals and corporations having an income in excess of the $5000 exemption. A uniform flat rate of 3 per cent is to be levied upon all sums over that amount.

Clearness in the presentation and discussion of the measure, demands separate treatment of the individual and the corporation.

In the case of the individual the tax is to be levied on his gains, profits and income, this return to include all interest except interest on government obligations; all salaries except salaries received by the officers of the state, and its political subdivisions; all profits realized within the year from the sale of real estate purchased within two years previous; all premiums on stock, notes or coupons; the amount received from the sale of merchandise and farm produce; money, and the value of all property acquired by gift or bequest; and all other profits or gains derived from any other kind of property, trade, or employment. This would be a statement of gross profits, and an income tax to be just must be a tax on net income. The recipient is therefore allowed to deduct from this amount all expenses actually incurred in conducting any business, occupation or profession. In addition to this, he is allowed to deduct all interest, taxes and losses actually sustained, all worthless debts, and the amount received from any corporation, company or association, as dividends, if the corporation from which the income is received has already paid the 3 per cent income tax on its net profits.

It is made the duty of all persons of lawful age, having an income of more than $5000 computed on the basis outlined, to make a return

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showing such facts to the collector, or deputy collector of the district in which he resides. Persons having an income of less than that amount are not required to make a return.

No exception is made for corporations. They also are required to pay an income tax.

All banks, banking institutions, saving institutions, fire, marine, life and other insurance companies, railroad, turnpike, canal navigation, slack water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies or associations doing business for profit in the United States, are to pay a 3 per cent tax on all net gains, profits, or income over $5000. Such net gains, profits and income to include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure, or interest paid from the net annual profits.

The law applies primarily to corporations for profit, and not to charitable, religious, educational, or building and loan associations, or savings banks or insurance companies, if the savings bank or insurance company is managed primarily in the interest of the depositors, or policy holders.

Every corporation, company or association doing business for profit in the United States is required to make a full return to the collector of the district showing the following facts for the calendar year next preceding the date of the return: first, the gross profits; second, the expenses, exclusive of interest, annuities and dividends; third, the amount paid on account of interest, annuities and dividends, stated separately; fourth, the amount paid in salaries, with a list of the recipients; fifth, the net profits, without allowance for interest, annuities or dividends.

The taxes provided for in the bill are to be assessed by the commissioner of internal revenue, and are to be due and payable on or before the first day of July in each year.

In the bill introduced by Senator Cummins, duties are to be levied and collected upon incomes received by every citizen of the United States, whether residing at home or abroad, and by every other person receiving an income from property, business, trade, occupation, profession, or employment, situated or carried on within the United States. The dutiable incomes are to be only those in excess of $5000, and from every taxable income the sum of $5000 is to be deducted, in order to ascertain the amount upon which the duty is to be levied and collected. The tax rate is to be as follows: Upon incomes not exceeding $10,000, 2 per cent; upon incomes not exceeding $20,000, 2½ per cent; upon incomes not

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exceeding $40,000, 3 per cent; upon incomes not exceeding $60,000, 3½ per cent; upon incomes not exceeding $80,000, 4 per cent; upon incomes not exceeding $100,000, 5 per cent; and upon all incomes exceeding $100,000, 6 per cent.

Taxable incomes may be derived from any of the following sources: first, salaries, wages, compensation for personal labor or service, but not including the salary of the existing president of the United States during the term for which he has been elected, the judges of the supreme and superior courts of the United States now in office, or the salaries of all officers and employees of a state or any of its political subdivisions; second, earnings in any profession, after deducting the actual expenses; third, any gains or profits of any trade, vocation or business; fourth, the gains or profits of all sales or dealings in property, whether real or personal, provided that the profits are not to be included if they arise from the sale of real estate purchased more than two years prior to the close of the year for which the income is being ascertained; fifth, any other gains or profits growing out of the ownership of, or interest in real or personal property, or the transaction of any lawful business carried on for gain or profit; and sixth, the amount received as dividends upon corporate stocks, together with the proportionate share of the undivided profits of corporations issuing such stock, the amount received as interest upon bonds, obligations, or other evidence of indebtedness.

It is made the duty of every person of lawful age having an income of more than $5000 for the preceding year, when the income is computed upon the basis outlined, to make a return to the collector or deputy collector of the district.

In order to check up the returns and get a more complete and accurate assessment, every corporation or association organized under the laws of the United States, or of any state or territory, is required to render a full return to the collector of the district in which its principal office is situated. This return is to include the following facts: first, the gross profits of the corporation or association; second, the expenses, including interest, annuities and dividends; third, the net profits without allowance for interest, annuities and dividends; fourth, the amount paid on account of interest, annuities and dividends, with a list showing the names and post-office address of the persons to whom any such interest, annuities and dividends were paid, and stating the amount paid to each person separately; fifth, the amount paid in salaries of $5000 or more to each person employed, giving the amount of the salary paid to each person and his name and post-office address; sixth, if the net profits were not

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wholly divided, then the amount which would have been paid to each person, if the profit had been wholly divided.

The bills differ in two important particulars. In the first place the bill introduced by Senator Bailey provides for a flat rate of 3 per cent, while Senator Cummins' bill provides for a gradual, but progressive rate as the income in question increases. The second essential difference is that Senator Cummins' bill provides for a tax on individual incomes only, reaching the corporation through the individual; Senator Bailey's measure, on the other hand, provides for the taxation of the incomes of both individuals and corporations, if the income received is above the exemption point. ROBERT ARGYLL CAMPBELL.

Insurance—New York—Amendments to the Armstrong Legislation. The thorough revision of the life insurance code of New York, enacted in 1906, under the spur of the Armstrong insurance investigating committee, has thus far escaped radical changes, although the legislature has each year made alterations of a minor character, and last year was only prevented from introducing an essentially reactionary modification by the veto of Governor Hughes. The amendments of 1907 and 1908 merely corrected imperfections in the new law which experience had quickly revealed. The 1909 amendments (S. B. 1460; Laws 1909, ch. 30) made substantial concessions to the convenience of companies and agents without involving any sacrifice of the principles involved in the reform measures. The principal features of the amendments of this year are: (1) the introduction of an alternative method of valuing securities, (2) a moderate extension of renewal commissions, and (3) the substitution of standard policy provisions for standard forms.

1. The most urgently needed modification was that permitting bonds to be valued on the amortization plan. The valuation of securities by the New York insurance department has hitherto followed market quotations, in common with the practice in other states. This method was unobjectionable as long as companies carried sufficiently large surpluses to meet any emergency. Notwithstanding severe criticisms, however, the 1906 amendments provided for an arbitrary limitation of surplus. Predictions of disaster came near being fulfilled in 1907 when assets had to be valued at the abnormally low market quotations of December 31. To save some companies from a technical impairment it was necessary to adopt the "rule of thirteen" whereby the market values of December were averaged with those of the preceding twelve months. Had the bond market depression been a little more severe,

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even this emergency measure would not have saved some of the companies. Inasmuch as good bonds fall in market value because of their very goodness, and hence salability in time of a panic, there is no danger in ignoring temporary market values, since life insurance companies rarely have need to sell their securities to meet their obligations. The law now provides that bonds and other evidences of debt, amply secured, and not in default are to be valued at par if purchased at par; if purchased above or below par, on the basis of purchase price adjusted so as to bring the value to par at maturity, and so as to yield meanwhile the effective rate of interest at which the purchase was made. The values found by the superintendent in accordance with this method are to be final and binding. Companies may, however, at their option, value their bonds at the market or at their book values provided the aggregate is not in *excess* of the amortized values. This method of gradual extinction of premium or discount has already been authorized for New York savings banks and is equally applicable to life insurance companies. Fire insurance companies will, however, probably continue to employ market values when less than adjusted values, and life insurance companies may do the same except in times of emergency. There is room for doubt as to the wisdom of interfering with the discretion and responsibility of managers in the matter of surplus, but with the present amendment this interference has for the first time ceased to be menacing.

2. The most distinguishing feature of the Armstrong legislation is the limitation upon expenses. No feature has been so vigorously and so persistently attacked. In 1908 the life underwriters and certain large companies agreed upon a compromise bill amending this section which passed the legislature practically unanimously but was vetoed by Governor Hughes, on the ground that it would seriously impair the effectiveness of the limitation. The amendment of the present year relaxes nothing of the essential part of the limitation, viz: that upon the expenses of new business, the chief part of which consists of the initial commissions to agents on policies written by them; but a concession is made in the matter of commissions upon renewal premiums which by the Armstrong limitation were confined to nine years. Even conservative companies have entertained misgivings as to their ability to prevent the disintegration of their agency forces under so strict a limitation. Their anxieties are removed, and agents pacified, by the extension of permissible renewal commissions to fourteen years, and by an allowance of 3 per cent collection fees thereafter, instead of 2 per cent as hitherto provided. To illustrate the difference, on an ordinary life policy, the

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1906 rule in effect permitted an agent's commission of about 50 per cent of the first premium, renewal commissions of 7½ per cent of each of the next nine premiums, and collection fees of 2 per cent of every premium paid thereafter. In most companies the commissions are divided between the general agent who frequently takes the renewals and collection fees, and the sub-agent or solicitor who ordinarily receives the entire initial commission. The new rule allows the same initial commissions but permits nine renewal commissions of 7½ per cent and five other renewals of 5 per cent, and collection fees of 3 per cent. Governor Hughes in his memorandum accompanying the bill thus comments upon this concession: "If any change is to be made in the statute, that now proposed may be allowed with the smallest risk of injury, while at the same time any possible ground of just complaint of the limitations of the statute is removed. After this certainly no one can be heard to assert hardship who looks at the matter from the standpoint of the policy holder." Renewal commissions may now be conditioned upon the efficiency of service of the agent receiving the same, or upon the amount and quality of the business renewed under his supervision. The advisability of this concession is dubious, but it has been urgently demanded, by one company in particular.

3. The Armstrong code prescribed standard forms of policies of life insurance, authorizing the insurance department to sanction and standardize other forms. But notwithstanding his caution, the superintendent has found it necessary to approve so many forms and yet without satisfying domestic companies, that New York has finally decided to adopt the plan of her sister states and substitute standard provisions to be contained in all policies, for the standard forms. As a precaution, however, it is provided that all policies issued or delivered within the state shall be subject to the approval of the superintendent of insurance. This solution puts all companies, domestic and foreign, upon a basis of equality, whereas it has hitherto been a source of complaint that foreign companies could employ within New York policy forms which were not allowed to the home companies. All participating policies issued or delivered in the state after 1909 must provide for a period of grace on premium payments of not less than thirty days, at not more than 6 per cent interest; for incontestability after two years except for non-payment of premiums or army or navy service without the consent of the company; that the policy and appended application shall constitute the entire contract; for annual dividends; for surrender and loan privileges with specified values; and for reinstatement.

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By the same bill insurance companies are relieved of the general expenses of maintaining the department of insurance, but examinations which by the Armstrong law must be as frequent as once in three years, are still charged to the companies. Restrictions are also imposed upon the reinsurance of risks, and more careful provision is made with reference to the licensing of agents.

Other life insurance laws enacted at this session relate to surrender values of policies (S. B. 1561; Laws 1909, ch. 595), and to the liquidation of delinquent insurance corporations (S. B. 1454; Laws 1909, ch. 300). The main object of the latter bill is to avoid the wasteful expenditures which attend the ordinary receivership. WILLIAM H. PRICE.

Labor Legislation—Oklahoma. During the first session of the Oklahoma legislature a fairly comprehensive labor law was passed. Oklahoma had just been admitted to the union, there was much work to be done, much new legislation to be enacted, and the legislature chose to make much of it at least progressive, and some of it even radical. The 1909 legislature attempted to complete, so far as possible, the work already begun, to perfect it, and correct such defects as seemed to exist and in addition to take a few more steps in advance and attempt the new and untried. As a state she has never been cautious or conservative. The amendments added and the new legislation passed with regard to labor proved conclusively that she has not as yet become so.

The labor legislation of 1908 centered around the commissioner of labor, a state board of arbitration and conciliation, and a free employment bureau, and dealt with the subjects of factory inspection, child labor, black listing, combinations, agreements and conspiracy. The new law deals primarily with child labor, the free employment bureaus, the time and frequency of paying employees in certain industries, and the miners' labor lien.

The old child labor law was a mere beginning, hardly sufficient to prevent the worst evils connected with the employment of children. The new law on the other hand is far in advance of the old and ranks well with any of the laws yet enacted either in the north or south. No child under the age of fourteen is to be employed or permitted to work in any factory, workshop, theater, bowling alley, pool hall, steam laundry, or any other occupation injurious to health or morals, or especially hazardous to life or limb. It is made the duty of the commissioner of labor, upon investigation by himself or the agents of his department or upon the complaint of the commissioner of charities or the board of

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health, to determine which occupations are injurious to health or morals or especially hazardous to life or limb, and to notify employees in such occupations of his decision. That decision is to be final until such occupation is defined by law as safe. No child under the age of sixteen is to be employed or permitted to work in any of the occupations mentioned above unless he is able to read and write simple English sentences, or shall have attended some school the preceding year during such time as attendance is required by law. No boy under the age of sixteen and no girl under the age of eighteen is to be allowed to work in any of these occupations between the hours of 6 p.m. and 7 a.m.

In the more dangerous occupations the general age limit is raised and no child under the age of sixteen is to be employed or permitted to work at any occupation deemed dangerous. The list of such occupations is given and is rather complete, including the handling of dangerous machinery, the use of poisonous acids, and the handling and storing of powder and other explosives.

Children under sixteen and all women of whatsoever age are denied the right to work underground in any mine or quarry, and no girl under the age of sixteen is allowed to sell any newspaper or magazine on the streets or in out-of-door places in any city.

The hours of labor of all children under sixteen in all occupations with very few exceptions are limited and the time when such labor may be performed is also regulated. No child under the age of sixteen is to be employed in any gainful occupation except agriculture and domestic service for more than eight hours in any one day or more than forty-eight hours in any one week.

Children under the age of fourteen are not allowed to work in certain occupations and in these same occupations children between the ages of fourteen and sixteen are not permitted to work until their parents or guardians have furnished the employers with an age and schooling certificate. This certificate is to be approved by the county superintendent of public instruction or by some other school official designated by him, and is not to be approved unless satisfactory evidence is shown by the last school census, by the register of the city or county, or by an affidavit of the date of birth made by a legally registered physician. The law takes cognizance of the fact that there will always be cases where such information cannot be obtained and in such cases the parent or guardian, or, if neither are living, the child itself may make affidavit stating the age, place and time of birth. This affidavit, however, may be used only when the child appears to be in good health and is of normal size, not

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under a required height and not less than a required weight. This certificate is deemed the property of the child and whenever he quits work it must be given to him, to his parent, or to his guardian.

The employer must keep these certificates on file for inspection by the factory inspector, truant officer, or other person charged with the administration of the law. In addition to this the employer must keep on file and post in a conspicuous place two statements, the one a register showing the names and ages of every child employed under the age of sixteen and the other a card in such form as the inspector may prescribe, setting forth the time of opening and closing the factory, the number of hours of labor required, the hours of commencing and stopping work, the time allowed for meals and, if there be two or more shifts, the number of hours in each shift.

The work of the free employment bureau which was established in 1908 was extended by the creation of a new bureau for the eastern part of the state.

The semi-monthly pay-day with payments in lawful money has also been instituted and now every person, firm or corporation in the state engaged in mining coal, ore, or other minerals, or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading for barrels, brick, tile, and tile machinery, agricultural or mechanical implements, or any article of merchandise must pay its employes at least twice a calendar month if they see fit to demand it. This payment must be made in lawful money of the United States and not in script.

The miners' labor lien has also been enacted and all miners or other employees engaged in the work of developing or opening up coal or other mines and in fact doing any work in and about mines are to have as security for the work done a lien upon all property of the person, owner, agent, firm or corporation owning or operating the mine to such an extent as is necessary to satisfy all labor claims in full. This law is to be enforced the same as the mechanics' lien law. ROBERT ARGYLL CAMPBELL.

Liquor. The control of the liquor traffic by legislation continues to occupy the center of the stage. The legislatures of practically every state holding sessions in 1909 struggled with some phase of the problem. The campaign of 1908 in many states was conducted on the issue of local option by counties or other local units and in some upon the issue of state prohibition or of prohibition enforcement.

Local option by counties was the issue which was most prominent. The elections in the states of Idaho, Indiana, Illinois, Ohio, Nebraska,

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South Dakota, Minnesota, Washington and Wisconsin turned largely upon this issue. Many of these states already had local option by townships or municipalities. The election in Maine turned on the question of resubmission of the prohibition amendment, and the prohibition forces won by a majority of eight thousand. Prohibition suffered defeat in Florida but in Tennessee the legislature was overwhelmingly in its favor. In South Dakota the question of county option was submitted by initiative petition to the voters and was defeated by a majority of about seven thousand.

The legislatures in session enacted very little local option legislation. In the state of Washington a law was passed giving the voters the right to pass upon the question of the sale of intoxicating liquor. The territories in which such election may be held, are: First, cities of the first, second, third and fourth classes and unclassified cities containing more than one thousand population; second, counties not containing such cities; and third, the territory of counties outside of the cities, of the classes above described. This measure, which is apparently a liberal compromise with the county option advocates, will localize the saloons in the cities. It will avoid the control of unwilling municipalities by the rural voters. It will not however give the prohibitive advantage which the optionists desire. A county having exempt cities will not derive any special advantages from a temperance point of view by voting "dry" while "wet" cities remain in its midst.

The legislatures of Nebraska, Idaho and Wisconsin defeated bills providing for county option. A bill for county option was vetoed by the governor in Utah. The proposed repeal of the county option law in Indiana whch was enacted at a special session in October, 1908, occupied the serious attention of the legislature during the entire session. The enactment of the law was generally believed to have caused the defeat of the republican candidate for governor and its repeal was the democratic program. The republicans stood firmly against repeal and with only two exceptions in the senate and four in the house, the republican legislators voted against the bill carrying the repeal. The disaffection of these six republicans was offset by the support which two democratic senators and eleven representatives gave to county option. The bill passed the democratic house but failed in the senate which was controlled by the republicans. In brief, the bill provided for the repeal of the county option law and the substitution of option by cities and incorporated towns. Saloons were prohibited outside of cities and incorporated towns. The bill provided several good regulative features.

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Saloon keepers were required to make an affidavit that they had not received pecuniary aid from any person engaged in the manufacture of liquors, or that the property used was not owned in any way by any liquor manufacturer. Licenses were limited to one for every 500 inhabitants and good provisions were made for the suspension and revocation of licenses of saloon men convicted of violation of the law. The limit of license fees to be taxed by cities and towns was raised to $900 with a minimum of $200 in towns and $250 in cities. This license fee was to be in addition to the county license of $150. As a regulative measure the bill was good but the people of Indiana have begun to look strongly to prohibition instead of regulation. Under the county option law fifty-nine counties had voted dry by May 28, 9 were wet by vote, and election had been ordered in many other counties. It is the general concensus of opinion that not more than fifteen counties in the state will retain the licensed saloon on the first vote.

State prohibition has added two more states during the past year. The legislature of North Carolina submitted the question to the people and it was carried by a large majority. Prohibition became effective January 1, 1909. The Tennessee legislature overrode the governor's veto and joined the prohibition states. Arkansas considered the matter at the last session but no final action was taken. The Texas legislature has had the matter of the submission of a constitutional amendment to the people under consideration. The regular session adjourned however, without action on it.

The regulation of the liquor traffic has fallen somewhat into the background by reason of the attention given to state prohibition and local option. Few measures of importance were passed at the session just closed. Nebraska and Wyoming fixed a license fee of $1000. The former also passed a daylight law requiring saloons to close from 8 p.m. to 7 a.m. In Missouri, Governor Hadley recommended an investigation of the subject by an expert commission. Such an investigation would serve a useful purpose. The one thing needed in liquor legislation is scientific light to enable us to determine which way we are tending. A measure providing for an investigation of the interstate regulation of the liquor traffic by congress was defeated in committee. The Iowa legislature started out as a strongly temperance body but little temperance legislation resulted. The prohibitory amendment to the constitution which was briefly discussed failed of enactment. The only laws passed relating to liquors were those prohibiting drinking on trains, requiring saloon keepers to be bona fide electors and prohibiting brewers and dis-

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tillers from owning places or fixtures for the retail of liquors. Michigan passed a search and seizure law patterned after the Ohio law and restricted saloons to one for 500 population. The Michigan county option law was first extensively tried in the spring election when twenty-seven counties voted dry and seven voted wet. The anti-saloon league in New York centered their efforts on a bill giving local option to cities. The measure was unfavorably reported. In Illinois a bill passed the house separating incorporated cities and towns from the rest of the township for local option purposes. This measure would weaken the local option law seriously and its passage is bitterly opposed. The problems in New Jersey turned on law enforcement but no law was enacted except one prohibiting advertising signs for liquor on the exterior of saloons, and one providing for commissions for controlling inebriacy through a sort of probation. The commissions were given power of enforcement of the laws against selling to habitual drunkards. Connecticut had the question of a referendum on a state-wide prohibition before its legislature besides regulative measures limiting the number of saloons, prohibiting screens and requiring that saloons have but one entrance.

The United States congress has had bills before it for many sessions regulating the shipment in interstate commerce of liquor into prohibition territory. Such a bill was passed by the house on February 17, 1909. The necessity of such a measure from the standpoint of enforcement of state liquor laws is obvious.

The Canadian provinces have also had the regulation of the liquor traffic before their legislatures. Local option laws have been enacted or amended in a number of the provinces during the session of 1908 and 1909. Other provinces of the British empire deal with the question largely by local option and Great Britain is coming to that method also, though for the present the question of compensation for damages to owners of saloon property has prevented the passage of the licensing bill.

JOHN A. LAPP.

Legislation in Nebraska. The most important enactments of the Nebraska legislature of 1909 related to guarantee of bank deposits, annual corporation license tax, Oregon plan for electing United States senators, non-partisan election of judges and superintendents of public instruction, changing from closed to open primaries and providing for state conventions to frame party platforms before the primaries, physical valuation of railroads, daylight saloon law, electing precinct assessors,

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hospital care of indigent consumptives at county expense, and a two years' residence requirement for divorce.

The recent legislature marked a reaction in the rural regions against the strong centralizing tendencies of the previous legislatures, especially in the field of administration. This reaction did not accomplish all that it desired, but registered its greatest victory in the enactment providing for popular election of precinct assessors to take the place of deputies appointed by the county assessor. The most significant tendency was toward extension of the state's functions and larger state expenditures, especially for schools and agricultural experiment work.

The two topics of fiercest controversy were liquor legislation and the acceptance of the Carnegie educational pension by the state university. The legislature was divided almost equally on both these propositions. Mr. Bryan threw his powerful influence into the balance against the acceptance of the Carnegie fund. It was beaten by a very close vote in the house after passing the senate. County option was defeated, but in its stead an act closing all saloons in the state between the hours of 8 p.m. and 7 a.m. passed. Liquor legislation goes over as "unfinished business" and will undoubtedly be one of the issues in the election of the next legislature. ADDISON E. SHELDON.

Municipal Charter Revision—Boston. A finance commission was appointed in July, 1907, to investigate and consider the financial condition of Boston. After a thorough investigation, the commission submitted a report in January, 1909. This report contains an analysis of the city government as at present constituted, the actual administration of 1906 and 1907, a discussion of remedies proposed, changes recommended by the commission, and a draft of proposed amendments to the city charter. Some of these proposed amendments have already become law by action of the legislature, and the others will be voted upon at the November election. The bill as passed by the legislature makes provision for one of two plans. One of these embodies the essential features of the plan for amendments recommended by the finance commission. Probably the most radical feature of this plan is that the mayor is to be subject to recall after two years. His term of office is for four years, the term at present being for two.

At the state election in November of the second year of the Mayor's term, the question as to whether there shall be a recall election is to be submitted. If a majority of the qualified voters registered is in favor of such election, then in January following (at the regular municipal

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election), an election for mayor shall take place, the name of the mayor at the time to be placed on the ballot without nomination. The one elected at such recall election shall be regarded as beginning a term of four years, though subject to similar recall at the end of two years. This system is, therefore, a modified form of what is generally known as the recall. The unusual feature is that the question whether there shall be a recall or not must be voted upon at the state election in the second year of the mayor's term. There will, however, be no extra elections, these being provided for at the regular state and municipal elections. Under the new plan, Boston will continue to have annual municipal elections. By the plan proposed by the finance commission, the mayor is given greater power. He can remove the head of any department or member of a board appointed by him by filing a written statement with the city clerk giving in detail the specific reasons for such removal. The person removed must be furnished a copy of this statement and may file a reply, but such reply shall not affect the action taken by the mayor. It is also provided in this plan for a city council to consist of nine members only, all to be elected at large for three years. This is the nearest approach to commission government that has been taken by any city of the first class. If this plan is adopted, the ward lines in Boston will be abolished. The other plan looks to the continuance of the present system of electing a mayor every two years, but makes provision for a city council of one chamber only. The city council, under this plan, would consist of one from each ward (except wards 20 and 24, which are to have two each) nominated in primaries and elected for two years as opposed to the present one-year terms, and nine members elected at large for three-year terms, making the total membership of the council thirty-six. The mayor, councilmen-at-large, and members of the school committee are to be nominated by convention and by independent nomination under this plan. Even this plan differs from the present system, since there will be but one legislative body, thus leaving Philadelphia, St. Louis, Denver and Baltimore as the only large cities which still retain two legislative chambers, and it may be proper to say that an effort is being made to have the charter revision commission of St. Louis make provision for one chamber only.

A return to the old method of submitting the charter to the voters is to be noted, for the people were given a referendum on the charter of 1822. There are some exceptions, however, in this case, for several of the proposed amendments to the charter were enacted directly by the legislature, the people having no voice in the matter. Of the legislation which

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will go into effect anyway, the more important provisions are as follows:

1. The creation of a permanent finance commission, the chief duty of which will be to investigate all matters relating to appropriations, loans, expenditures, administration, etc. In other words, the chief function of the commission will be to secure publicity as to what is being done by the city government. This commission is to be appointed by the governor. The reasons for this, according to the finance commission, is that it was felt that such a body should be entirely independent of the city government, so that it might feel free to make any investigations.

2. All appointments of heads of departments must be sent to the state civil service commission, the commission to investigate each appointee to determine whether he is qualified for the position. This is to carry out the recommendation of the commission for the purpose of securing experts instead of politicians as department heads. No appointments by the mayor are to be submitted to the council for confirmation.

3. All appropriations must originate with the mayor, except those for school purposes. The duty of submitting an annual budget is imposed on him, the city council having the power to reduce any item in the budget, but not to increase any. The mayor is given an absolute veto over any matter carrying an appropriation.

4. There is created a municipal publication to be known as the *City Record*, in which all bids for public work, etc., are to be advertised exclusively. It will also include all appointments, records of votes in the city council and school committee, etc.

Other sections taking effect without popular vote make it a prison offense for any official to expend more than the appropriation; enlarge the power of the city auditor, providing that duplicates for bids for city contracts be filed with him and that he make a monthly report of the unexpended balances to each department head; provide that all loans in the future shall be serial—payable annually. This latter provision does away with the sinking fund plan of paying off a public debt. Boston is thus the first of the larger cities in the East to adopt the serial bond.

All of these measures were recommended by the present finance commission. Under the plan as recommended by the finance commission, party nominations and designations will be abolished, for all nominations are to be made by petition of not less than 5000 voters, without party designation on the ballot. Three members of the city council are to be elected every year, and as there will generally be few elective officers, the ballot will be greatly simplified.

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It is believed by many in Boston that a great advance has been made, regardless of which of the plans is accepted by the people. It may be well to give the summary of the legislation recommended by the finance commission to see how closely their recommendations were followed.

"The legislative measures which the commission regards as essential to enable the people of Boston to redeem their government may be summarized as follows:

1. A simplified ballot, with as few names thereon as possible.
2. The abolition of party nominations.
3. A city council consisting of a single small body elected at large.
4. The concentration of executive power and responsibility in the mayor.
5. The administration of the departments by trained experts, or persons with special qualifications for the office.
6. Full publicity secured through a permanent finance commission.

These measures will enable a good mayor and city council to give the citizens a really good administration, will encourage indifferent men to keep a fairly straight course by freeing them from the partisan fetters of the present system, and will deter bad men, if elected, from demoralizing the public service and using the public money for their own advantage.

The task set before the commission was to devise a practical working form of government for the city of Boston; not a charter for some other city; much less a charter good for all cities. It is under no illusion that the changes recommended will of and by themselves secure good government. No municipal charter can be a self-executing instrument of righteousness. If the people want the kind of government they have had during the past few years, no charter revision will prevent it. If, as the commission believes, they desire good government, the plan suggested should enable them to obtain and keep it." HORACE E. FLACK.

Municipal Charter Revision—Kansas City, Mo. Kansas City, Mo., adopted a new charter at the last state election. The good features of the old charter, which was adopted in 1889, were retained, but the difficulties in the way of the practical administration of the city government made it necessary, or at least desirable, to have a new charter. The city was fortunate in that it did not have to resort to the legislature to secure a new charter, for all that was necessary was to elect thirteen freeholders for this purpose. After devoting three months of continuous labor, the board of freeholders submitted the present charter which was adopted by a vote of the people.

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The new charter is a substantial reconstruction of the old charter along modern, progressive lines, giving greater power to the city in general, and especially in some important particulars. In submitting the charter, the board of freeholders characterized it as providing for "the transaction of public business with the same promptness, efficiency, and common sense that a citizen would use in conducting his own private business." If this has been accomplished, progress has been made.

The new charter confers greater power on the city for the preservation and protection of health and property. The city is given power to construct and maintain dikes and levees for the prevention of floods and to acquire, maintain, and operate tunnels, tracks, depots, telephone and telegraph lines, bridges and subways. Broader powers of condemnation for public purposes are also given.

The common council is given greater powers, among them the power to regulate, control or prohibit sign boards, bill boards, and structures for advertising purposes. Another very important power conferred is that to regulate the rates to be charged for services of public utilities. The city is also given the power to establish and maintain plants for paving, repaving and repairing streets, and to bid in competition with contractors for such work. The power of the council to subject occupations, corporations, institutions, etc., to license, tax and regulation has been enlarged.

The power of the mayor is also increased by making him a member *ex officio* of all boards. He is also made directly responsible for the management and operation of the fire, water and health departments by placing in his hands the power to appoint, without confirmation of the council, the members of these boards. The reason given for this is that the right of confirmation originally given the council was intended as a check upon bad appointments by the mayor, but that this right has been converted into an actual participation by the council in the appointing power.

A purchasing agent is provided for in the new charter. He is given power, under certain restrictions, to purchase materials and supplies for the several departments, it being the opinion of the framers that this will result in great economy.

A municipal court is created to take the place of the police court and the mayor's court. It will have jurisdiction over grading and condemnation cases in addition to the functions discharged by the police court under the old charter. It has been estimated that three-fourths of the grading cases can be disposed of in the municipal court without appeal,

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thereby resulting in a large annual saving to the city in court and legal expenses. The judge of the court must be an attorney of at least five years' experience at the bar.

Provision is made in the charter that no franchise can be granted for a longer period than thirty years without submitting it to a vote of the people. There is also included a provision to the effect that a public utilities commission can be created by ordinance with power to investigate all facts and matters relating to the rates charged by public service corporations and the character of the service rendered. The city has authority to require and enforce the production of books and papers and to compel the attendance of witnesses for the purpose of ascertaining the facts under investigation.

The health board is given greater power and a somewhat novel feature is introduced. No member of the board can be a practising physician, and the members are to serve without compensation. The board is given authority to appoint a medical staff, which also will serve without compensation. This staff, it seems, will act in an advisory capacity, being designated as a "visiting and consulting staff." The board will choose the health commissioner and other officers and is given power to abate all nuisances in addition to the general control over the inspection of meat and milk, the enforcement of pure food laws, regulations concerning contagious or infectious diseases, etc. The board is given power to act immediately and effectively in case of great emergencies which affect or endanger the public health. The framers considered the subject of health one of the most important coming before them and thought that all authority regarding sanitary measures should be centered in this board and that it should be held directly responsible for their enforcement.

Of the new features in the charter, the most important are the provisions creating a civil service commission and providing for the referendum in certain cases. The board of freeholders state that the "referendum is a method of securing the highest degree of self-government." No franchise ordinance can become effective within sixty days and if during this period a petition is signed by twenty per cent of the qualified voters, the ordinance must be submitted to the people for adoption or rejection. The council can submit any franchise ordinance to the people without a petition, but no franchise can be granted for more than thirty years without submission to a vote of the people.

The provision in regard to civil service seems to be very full and complete, an effort being made to devise a system which will be practical, fair, and efficient.

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The voters were given an opportunity to vote on an alternative proposition—the recall. The board of freeholders were unwilling to jeopardize the entire charter by incorporating the recall, but considered it of sufficient importance to justify its submission as a separate proposition. It may be mentioned that all boards are made uniform in number and qualifications, each board to consist of three members only.

HORACE E. FLACK.

Public Utilities. A review of the legislation affecting public utilities for the session of 1909 will show plenty of recommendations from the executive officers and plenty of agitation in the legislatures but a dearth of laws enacted. The enactment of the public utility laws of New York and Wisconsin in 1907 was supposed, with good reason to be the beginning of an era of legislation for the control of public service corporations by state commissions. The agitation swept over the country. The laws of New York and Wisconsin were analyzed and discussed by the press and the public in every state. Their results were eagerly watched by an interested people and the success which was achieved by those two states was applauded as the beginning of a better era in the relation of the people to the public service corporations. As expected, this class of legislation occupied the attention of many legislatures. The governors of most of the larger states took occasion in their messages to recommend the enactment of laws following in general in the path of the New York and Wisconsin laws. Bills were introduced in nearly every state whose legislature was in session. The chief activity for such laws was in Connecticut, New Jersey, Indiana, Michigan, Minnesota, Nebraska, Iowa, Kansas, Illinois, Missouri, California, Idaho, and Washington. At this time (June 1) it is probable that not a single state will enact a public utilities commission law. Here and there some detached pieces of legislation have been enacted, as in Michigan, where telegraph and telephone companies were made subject to the ad valorem tax and placed under the control of the railroad commission. The legislature of New York again failed with no apparent good reason to carry out the recommendations of Governor Hughes to place telegraph and telephone companies under the commission. The extension of powers of investigation which was desired by the commission also met with defeat. A legislative committee however, was provided to investigate and report on the extension of powers. The trend of legislation in this state, while not hostile to the existing control, was clearly against any extension.

Connecticut considered the report of the special commission appointed

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in 1907 to report upon the subject with a draft bill. The bill reported, after being amended to destroy its strength, is apparently on the verge of defeat. New Jersey again failed to pass a public utility law in spite of the urgent recommendation of Governor Fort. Indiana seemed certain in the beginning of the session to enact such legislation, but a clever move by tbe public utilities in introducing a bill of their own which provided a minimum of control with maximum advantages to themselves, threw the matter into chaos and the limited time of the session prevented action.

The Kansas bill was also weakened to uselessness and then defeated. Wisconsin's law makers were occupied in correcting slight defects discovered in the practical working of their law. The contest in Iowa was spirited but no legislation resulted. The progress of the bills in the other states has been more or less indifferent. A wave of conservatism or of indifference seems to have swept over the country. Everywhere the public service corporations seem for the time to be in control. Whatever the cause, the fact is plain that the sessions of 1909 have enacted very few measures calculated to control corporate enterprises in the interests of the public. JOHN A. LAPP.

Public Utilities—District of Columbia. The bill providing for the control of public utilities in the District of Columbia, introduced into the United States senate by Senator LaFollette, in the second session of the sixtieth congress, embodies the best features of public utility control by commission which have been developed by the experience of the states. Senator LaFollette was largely responsible for the formulation and enactment of the Wisconsin railroad commission law which was in turn the basis of the public utility law of that state passed in 1907. These laws have revolutionized the relation of the public service corporations to the public in Wisconsin and the influence of their example has been exerted in many states. In framing the bill for the District of Columbia, the author borrowed largely from the features and wording of the Wisconsin law. The bill is built on the experience of that state. It is a model with which legislators should be familiar before attempting to pass any legislation along this line.

The bill provides a public utilities commission of three members to be appointed by the president with the consent of the senate, for a term of five years at a salary of five thousand dollars. One member of the commission must have a knowledge of the law of public utilities, one of accounting and business of such companies, and one of the cost and

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operation of public utilities. No member may be interested financially in any public utility or in any stock, bond, mortgage, security, or contract of a public utility, and an oath must be taken to that effect. In addition it is provided that the members shall not hold other office or serve on or under any political committee. The employees of the commission except the secretaries and experts are required to be certified by the United States civil service commission. The public utilities placed under the commission are street railways, telegraph and telephone companies and other companies organized to furnish light, heat, water, or power for the public.

The first step in any regulation of public service corporations is to determine the facts upon which regulation may be intelligently based. The officers charged with the power of regulation must know the condition of the business. Intelligent publicity is the cure for many evils. The publicity feature of this bill is one of its strong points. The commission is authorized to determine the actual condition of every public utility by a valuation of its property used and useful for the convenience of the public. In making the valuation, franchises and privileges are valued only at the actual amount paid for them by the companies. Not only is a valuation of actual property required, but also the actual cost of construction and equipment and, further, the cost of reproduction of the physical properties. The commission is required also to ascertain the actual financial operations and condition of the companies. These facts being determined, the commission is given the means to enforce publicity for future operation by the system of uniform accounts, and reports required of public utilities both for the regular operations and for new construction and extensions. The commission fixes the standard units of service and requires detailed information of the cost of the items per unit which enter into the cost of the service. The actual cost of each item by percentages set over against every other item will give a comparative table which tells the actual conditions by means of a deadly parallel. These facts would give the commission and the public an intelligent basis for action—a condition so necessary to fair regulation.

The bill places the general requirement upon all public utilities in the District to furnish "reasonably adequate service and facilities" at a charge which shall be "reasonable, just and non-discriminatory." Whenever public convenience demands it, every public utility must for a reasonable compensation, allow the use of its facilities to other utilities when such use will not be seriously detrimental to its service. The public utilities are required by the bill: to give all reports, accounts

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and information demanded by the commission; to file their schedule of rates together with the rules affecting the same and give notice of any contemplated change; to report all accidents attended with loss of life; and to conform their rates and practices to the orders of the commission. They are prohibited from charging a greater or less compensation than that printed in the schedule; issuing stock or bonds without authority from the commission; contributing to campaign funds; giving undue preference or advantage to any party; receiving rebates or concessions; and performing any act contrary to the law or the orders of the commission.

The bill gives the commissioners general and specific powers to carry out its provisions. They may at their discretion investigate any rate or require a change in any practice; they are required to ascertain and prescribe suitable and convenient standards and measurements for products or service, and for the accuracy of meters and appliances; and supervise the issue of stock and bonds. Investigations may be had in relation to rates or service on the initiative of the commission or upon complaint of any mercantile, manufacturing or labor organization, the commissioners of the District of Columbia, twenty-five persons, firms or corporations, or by any public utility in regard to its own service, by filing notice of the complaint with the public utility complained of and fixing a day for a public hearing. If on the hearing it is found that any rate or practice is insufficient, unreasonable, or discriminatory the commission may fix a rate or practice to be followed in the future. Any rate or practice so fixed must be followed until a change is permitted by the commission. The cost of investigation is placed upon the public utility if found to be at fault. If a patron complains of the inaccuracy of a meter or other measuring appliance the expense of examination falls upon him, if the appliance is not found to be to his disadvantage, otherwise the expense must be paid by the public utility. The public utility must also bear the expense of any investigation of rates or service when the same are found unreasonable or discriminatory.

The right of appeal from all decisions upon the ground that a rate or practice would result in confiscation of property, always exists without provision being made for such appeal. The law recognizes that fact but it seeks to safeguard the commission and the public by a special mode of procedure. The interstate commerce commission and state railroad commissions have been at times discredited because their decisions were overruled by the courts. This was accomplished generally by design on the part of the corporation—a part of the evidence being withheld from the commission which was later presented to the courts—with the result

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that the commission having given a decision without the complete facts, was overruled by the courts. By this means it was sought to undermine the public confidence in the commissions. The LaFollette bill copies the admirable features of the Wisconsin law in this respect, by providing that if additional evidence is presented to the court, the court shall stay further proceedings for fifteen days, and in the meantime lay the new evidence before the commission. If the commission determines upon this new evidence to amend its order, or to stand by the original decision, the court renders judgment upon the amended or original order of the commission. This provision results in placing all the evidence before the commission in the first instance.

Two other features of the bill require special mention, namely, those relating to the issue of stock and bonds and to depreciation. Probably the worst evil existing in public service corporations is found in the issuing of securities. The evil cannot be remedied as to past transaction without injury to innocent investors but it can and should be regulated as to future issues. Senator LaFollette's bill has admirable features in this respect. It prohibits absolutely any stock, bond or scrip dividends to stockholders. It prohibits issues of stocks or bonds at less than par and in any reorganization or consolidation it prohibits a higher capitalization than that of the original companies. The permission of the commission is required for all issues and before the permission is granted all the facts of the issue must be presented. Under the provision of the bill it is difficult to see how any water could get into the stock of the public service corporations of the District of Columbia.

The matter of depreciation is of special importance. It has too frequently happened that manipulators have secured public utilities; run them for a few years without providing for depreciation; and finally unloaded them upon the municipality or the public in a poor or perhaps worthless condition. This has been a frequent cause of the failure of municipal ownership. The commission under this bill is given power to require every public utility to carry a proper and adequate depreciation fund if it can be reasonably required. The rate of depreciation of the different classes of property is to be determined by the commission. The funds set aside for the purpose and all earnings may be invested, or used in new construction. JOHN A. LAPP.

The Recall. The municipal charter adopted by Colorado Springs on May 11, 1909, provides for the recall of elective officials. The petition for a recall election must be signed by a number of qualified electors equal to

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at least 30 per cent of the vote cast for all candidates for mayor at the last preceding election. The petitions must be returned within thirty days from the issuance of the blank forms and if the number of signatures be found insufficient it may be amended or a new one made. If the petition is found sufficient the election is to be called in not less than thirty nor more than forty days from the date of the clerk's certificate that a sufficient petition has been filed. However if any other municipal election is to occur within sixty days, the council may postpone the removal election to the date of the ensuing election.

The petition must contain a specific statement of the grounds upon which the removal is sought, and one of the signers of each paper must make oath before a competent officer that the statements contained therein are true and that each signature appended to the paper is genuine.

No recall petition may be filed against any officer until he has held his office at least six months. Any officer sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk is required to place his name on the official ballot without nomination. M. A. S.

Revisor of the Statutes. The Wisconsin legislature has enacted a law creating the office of revisor (Laws 1909, c. 546). The appointing power and supervision of the work is vested in the trustees of the state library.

It is the duty of such revisor: (1) to maintain a loose leaf system of the statutes, separating those statutes in force from those repealed or superseded; (2) to maintain a loose leaf ledger of court decisions referring to the statutes; (3) to present to the committees on revision of each house of the legislature, at the beginning of each session, bills providing for such consolidation and revisions as may be completed from time to time; (4) to keep an alphabetical, subject card-index to the statutes; (5) to formulate and prepare a definite plan for the order, classification, arrangement and printing of the statutes and session laws; and (6) to supervise and attend to the preparation, printing and binding of such compilations of particular portions of the statutes as may be ordered by the head of any department of the state.

Under the present rules of the Wisconsin legislature, which require the giving of section numbers to all general laws, an automatic system of revision is provided. With an expert, experienced revisor correcting errors which have become apparent in the practical working of the laws,

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harmonizing inconsistencies and gradually revising and consolidating the statutes, Wisconsin would constantly have before its people a revised set of statutes, up to date.

The law limits the salary of the revisor to $5000 and the entire compensation of revisor and assistants to $10,000 annually.

LAURA SCOTT.

Tariff Commission. A bill (S. 1747) to create a tariff commission was introduced in congress by Senator LaFollette on April 15, 1909. The bill provides for a commission of nine members to be appointed for terms of three, four, five, six, seven, eight, nine, ten, and eleven years respectively; their successors are to be appointed for terms of ten years. Any commissioner may be removed by the president "for inefficiency, neglect of duty or malfeasance in office." Congressmen are not eligible to appointment. No two members of the commission may be resident in the same United States judicial circuit and not more than five members may belong to the same political party. The commissioners to be chosen are required to possess qualifications along the following lines: one is to have "a practical knowledge of the manufacturing industry;" one, "a practical knowledge of agriculture;" one, "a practical knowledge of the import business;" one is to be "a representative of labor"; one is to be "a lawyer who has made a special study of the tariff laws and customs practice in the United States;" one is to have made "a special study of domestic and foreign tariffs and commercial reciprocity;" one is to have "expert knowledge of costs of production and accounting;" one is to be "a trained statistician who has made a special study of prices in domestic and foreign markets;" and one is to be "an eminent economist who has made a special study of wages and cost of living."

It is made the duty of the commission to make "an investigation of all questions and conditions relating to the agricultural, manufacturing, mining, commercial, and labor interests with reference to the tariff schedules and classifications of the United States and of foreign countries." In making this investigation the commissioners are required to ascertain the cost of producing similar articles in this country and in competing countries, and in this connection they are to ascertain the wages, the hours of service, the efficiency of labor employed, and the standards of living of such laborers, as well as the cost of raw material, the cost of labor, the fixed charges, the depreciation upon the true value of the capital invested, and all other items necessary to determine the true cost of the finished product.

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The commissioners are also required to investigate the question of monopoly control over any domestic article on the dutiable list, and to ascertain whether monopoly power is exercised either as regards "production, prices, or wages in the United States" or as regards "prices in any foreign market." In pursuing such investigations the commissioners are to "begin with the primary industries producing iron ore, coal, lumber, and other raw material from the natural resources of the country," and they are to "proceed in consecutive order as nearly as practicable from the industries producing raw materials to the industries producing finished products."

Provision is made for the suspension of duties by the president whenever it is found that any "agreement or arrangement" with reference to any dutiable article exists "by which the parties thereto unduly promote their advantage," or if it is found that any person or association "owns or controls such a proportion of any domestic article named on the dutiable list as to control the market price of such article, and any undue advantage is taken in the exercise of such control, and that this advantage is facilitated by the duties imposed on a like imported article." Special provision is made for those articles in which the labor cost is greater in the United States than in foreign countries. In such cases a duty is to be imposed equivalent to the difference in the labor cost of the domestic and foreign article; and in case the price of the raw material "is not controlled by agreement or arrangement" then there is to be added to the duty, "the difference between the domestic and foreign cost of the raw material." The suspension or reduction of any duty is to remain in force until removed or modified by congress.

Careful provision is made for carrying out the purposes of the bill. Ample authority is given the commissioners in making investigations, and full reports are required, so that the data collected from time to time may furnish a basis upon which the president and congress may act.

M. A. S.

Unemployment. The labor members of the British parliament have introduced a comprehensive measure designed to deal with the problem of unemployment. The bill proposes to secure to every unwillingly idle workman some form of employment, and failing the provision of work, maintenance is to be provided for him and his dependents at public expense. For the unemployables, the voluntary idlers, penal colonies are to be provided.

The plan of the labor party is to make the council of every county and

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of every county borough the local unemployment authority. These local bodies are authorized to act together in order to carry out any plans for relieving the unemployed that may require co-operation of several authorities. All unemployed persons are to be registered by the council of every borough, county borough, urban district, or parish. In those parishes where there are no councils the overseers are to register the unemployed persons and communicate the information to the local unemployment authority of the district. The expenses of these local authorities are to be met by general taxation.

Where an unemployed person who has resided not less than six months in the area has registered himself as unemployed, it is proposed to make the local unemployment authority provide work for him within a period of six weeks, or, failing the provision of work, provide maintenance for him and his dependents. It is provided that where such a person has been offered reasonable work at reasonable wages and hours and he has refused it, the local authority is to be released from its duties toward that person.

Every county or borough council, under this scheme, is to establish an unemployment committee to which all matters relating to the exercise by a local unemployment authority of their powers and duties, except the raising of a tax or borrowing money, shall stand referred. The chairman of this committee and a majority of its members are to be members of the council, but other persons of experience in industrial or agricultural organization may be appointed. One-fifth of the committee are to be selected from recommendations made by trade unions.

This unemployment committee is to "draw up a scheme or schemes for providing work for the registered unemployed persons of their area, and such scheme or schemes shall, so far as possible, provide for classification of applicants for work, so that they may be set to work which is suitable to the needs of the individual applicant, provided that in all cases of physical and industrial unfitness special regard shall be given to the ultimate improvement of the applicants." The unemployment committee is also to prepare a scheme of maintenance for those for whom no employment can be found. When the local unemployment authority is of opinion that unemployment in any case is due to deliberate and habitual disinclination to work, it may, after trial in a court of summary jurisdiction, send him to a reformatory colony for a period not to exceed six months. The committee may also assist any unemployed person by aiding the removal to another area of that person and any of his dependents.

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Besides the unemployment committees in each local district, it is proposed to have a central unemployment committee to consist of persons representing the board of agriculture, the board of trade, the board of education, the local government board, and persons nominated by the Trades Union Congress and the General Federation of Trade Unions, with a secretary appointed by the president of the local government board. This central committee is to frame schemes for the provision of work for unemployed persons; to establish and maintain training farms and forest schools for the training of persons desiring to fit themselves for occupations connected with the land; to establish reformatory colonies for those convicted of deliberate and habitual disinclination to work; to make regulations as to the form and extent of the maintenance to be provided for those for whom no work can be found; to coordinate the work of the local committees and to advise them on any matters relating to unemployment.

When in any local district more than four per cent of the wage-earners in the area are registered as unemployed, the district is to be considered as suffering from exceptional unemployment. In such cases the local unemployment authority passes a resolution declaring this to be the case. Then the local committees may provide work for the excess of unemployed over four per cent at the expense of parliament; or the unemployed in the areas suffering from exceptional unemployment may be put to work on works of national utility; or failing the provision of work, the central unemployment committee is to provide maintenance for such persons and their dependents.

It is further provided that under no circumstances shall an unemployment committee supply workmen to any employer of labor during times of trade disputes in which he is involved; also that the provision of work or assistance or maintenance shall not disentitle a recipient to be registered or to vote as a parliamentary, county, or parochial elector, or as a burgess.

This plan of the labor party was presented to parliament on April 30, 1909. The bill was defeated, although half the commons voted for it. The government has now introduced a substitute measure which embodies a number of the labor party's ideas, but does not go so far. This measure will be described in the next number of the *Review*.

WM. M. LEISERSON.

Wages Boards for Sweated Industries. In 1889 the British House of Lords committee on sweating presented its report. "The Lords on

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Sweating" stirred the country a good deal but no definite action was taken. Later the factory and workshops act of 1901 was amended to secure better health regulations, but no direct attack on sweating was made. Last year the select committee on home work appointed by the house of commons made its report. On the basis of this report the National Anti-sweating League presented the sweated industries bill which passed its second reading in parliament on the twenty-first of February, 1908.

This bill is modelled after the Victoria wages boards. It provides for the establishment of wages boards having the power to fix the minimum rate of wages for workers in tailoring, dressmaking, and shirtmaking. Other trades may be added by an order from the home secretary, upon application by any trade union or trades council representing persons employed in the trade in the district; or by any six employers or employes. The wages boards will be composed of not less than six nor more than ten representatives of employers and employes in equal numbers. The chairman is chosen by the members or nominated by the home secretary. The boards will have power to fix a minimum rate for any single kind of work. The widest discretion is allowed in fixing rates according to time or piece work, and in varying the minimum according to locality, kind of work, and the persons employed. The duty of enforcing the provisions of the act is placed on the factory inspectors.

On March 22, 1909, the government itself presented a similar measure known as the trade board bill, introduced by Mr. Winston Churchill, president of the board of trade. This bill also has passed its second reading. In some particulars the government bill goes further than its predecessor, but it is criticised by the friends of the first measure as being too permissive in character. It provides that wages boards may be established and that representatives of the workers may be appointed on the boards, while under the sweated industries bill wages boards shall be established and labor representatives shall constitute part of the membership of the boards. The government bill provides for a minimum wage to be established in five trades: ready-made and wholesale tailoring, cardboard box making, machine-made lace and net finishing, and ready-made blouse making.

The principle of wages boards for the establishment of a minimum wage has met with severe criticism. Regulation of wages is essentially different from the regulation of sanitation and hours. The difficulty of enforcing the law among the class of workers engaged in sweated trades will be very great. Their fear of consequences will make them useless

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witnesses in a court of law. Their ignorance of the real purpose of the boards will drive them to evasions and defiance of the law. Raising wages in certain trades will crowd the less efficient workers into other trades which are not regulated. In the trades named in the present bills piece rates are the must difficult of all to determine. In tailoring and dressmaking the complexity of detail is extreme and confusion in fixing piece rates has baffled even the Amalgamated Society of Tailors who are now demanding statutory wages boards. Finally some hold the principle to be economically unsound, believing that the only effective way will be to place the burden of taxation on the non-producer or increase the productive efficiency of the wage-earner.

IRENE OSGOOD.

Water Storage Commission—Maine. A state water storage commission has been created in Maine (Laws, 1909, c. 212) to secure hydrographic data so that the next "legislature may have before it a comprehensive summary of the possibilities that lie in the development of the water powers in the state as a natural resource and the necessary steps that should be taken by the state to further increase and conserve them."

The commissioners are required "to collect information relating to the water powers of the state, the flow of rivers and their drainage area, the location, nature and size of the lakes and ponds in the state and their respective value and capacity as storage reservoirs, and such other hydrographic data as they may deem of value." So far as possible the work of collecting data is to be done in conjunction with the state survey commission and with the United States geological survey. The law further provides for the collection of detailed data relating to dams, storage basins, and reservoirs. The cost of securing lands for a state forest reserve, and the reforestation of barren and denuded lands are also to be investigated by the commission.

The law carries an annual appropriation of $5000 for a period of two years.

Woman's Department—Bureau of Labor—Minnesota. Minnesota has created (Laws, 1909, c. 497) a woman's and children's department in the state bureau of labor. The commissioner of labor is required to appoint "a competent woman to act as assistant commissioner" and also such women factory inspectors as "may be necessary to inspect the sanitary and general conditions" under which women and children are

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employed. The assistant commissioner is required to report, for the use of the next legislature, "such findings and recommendations as will promote the health and general welfare of the women and children" employed in the state.

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NEWS AND NOTES

Current Municipal Affairs

WILLIAM BENNETT MUNRO

The city of Chicago has encountered unusual difficulties in its efforts to procure a new charter. Three years ago a charter convention was organized and after a great deal of persevering labor presented its report to the Illinois legislature embodying with this report the draft of a new charter for the city. This draft was considerably amended before the Legislature permitted it to be placed before the voters at the polls. These latter rejected it by a substantial majority. The convention was, however, reorganized and proceeded with its work, this time submitting not a single measure but a number of measures for the legislature's consideration. Eleven charter bills in all were sent by the convention to the legislators at Springfield; but not one of these proved sufficiently acceptable to secure its passage in either house. Matters remain, therefore, just about where they were three years ago. Two special measures relating to Chicago were placed on the statute book, however, one of them increasing the city's bonding power by about $16,000,000. The other, which slightly amended the municipal court act, must be accepted by the Chicago voters at the next election before it becomes operative.

The proposed New York charter seems likewise to have met its obstacles and to have found these difficult to surmount. This charter bill was introduced in the New York senate on March 10 and in the house of assembly on the following day, but was not favorably reported in either. On April 15 a resolution was introduced and adopted in both houses providing for the organization of a joint recess committee consisting of three senators and five assemblymen to examine and consider the charter and the administrative code as these had been reported by the Ivins charter commission. This joint committee was instructed to report to the legislature not later than February 1, 1910. As constituted, this joint committee now consists of Senators Brough, Gledhill and Grady, with Assemblymen Hammond, C. F. Murphy, Robinson,

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A. E. Smith, and Geoghegan. Those who are best informed concerning the attitude of the legislature entertain serious doubts of a favorable report upon the present proposals.

While the Ivins charter and administrative code embodied many commendable features these proposals did not evoke much popular enthusiasm and this doubtless encouraged the Albany legislators to take their time. One reason for the lack of enthusiasm may without doubt be found in the fact that the mayoralty election is now drawing near and the interest of a large section of the voters is more readily concentrated upon the question as to who shall be the next mayor than upon questions relating to what the next mayor may do. Mayor McClellan has now been in office for six years and while his official conduct has been on the whole satisfactory to perhaps the majority of New Yorkers he has been vigorously condemned for many of his appointments and in connection with many of the plans which he has supported. His action in the Bingham Case has been particularly resented in very many quarters. His alliance with the leaders of the Tammany Hall organization has not been, until recently at any rate, as close or as loyal as these latter could desire and it is at least doubtful whether he could obtain the regular Democratic nomination were matters pressed to a decision at the present time. Much will depend upon the capacity for united effort which the various opponents of Tammany manage to show during the near future.

New York has undergone a considerable awakening during the last few years, although this has been brought about so quietly that it has not been fully realized throughout the country. For this awakening the City Club, the Citizens' Union, and above all the bureau of municipal research have been primarily responsible.

On January 29 last, after eighteen months of loyal labor, the members of the Boston finance commission made their report to the Massachusetts legislature. The report, which is one of the most comprehensive of its kind, is now being printed in four parts. The first part is introductory and historical in character, tracing the development of Boston's government from the time of its settlement as a town down to the present day. Special attention is given to the charter of 1822 and the charter of 1885, this latter being the basis of Boston's administration until the present year. Part two of the report contains a critical survey of existing administration with special attention to the Fitzgerald

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administrations of 1906–1907. Twenty pages are devoted to a scathing arraignment of Mayor Fitzgerald and his methods, and, if the strictures of the commission be true, as they doubtless are, one can find no better description of the way in which a city's treasury may be raided by political spoilsmen than that contained in this part of the report. Part three of the report discusses present defects and proposed remedies, while the final portion of the report contains the commission's draft of a new charter.

The finance commission proposed many radical departures from the orthodox type of city government, including among these a four-year mayoralty term with the privilege of recall at the end of two years, a city council of nine members elected at large for a three-year term and one-third retiring annually; and the entire abolition of the ward system. Further the commission proposes that all nominations should be made by petition instead of by joint primary as heretofore, that all appointments made by the mayor to headships of departments should be certified by the Massachusetts civil service commission; that no proposal for the expenditure of money should be originated by the council; and that a permanent commission of five members, named by the governor of the state, should be established and that this body should be entrusted with the duty of constantly watching the course of administration in the interests of the public.

The proposed charter encountered vigorous opposition and equally vigorous support. When it went before the appropriate legislative committee for hearings several alternative schemes were presented, most of these having in view less radical departures from the existing system. One of these schemes, that of ex-Mayor Edwin U. Curtis, enlisted a considerable following and it was finally determined by the state authorities that at the next city election the voters of Boston should be given the opportunity of choosing between this scheme and certain of the finance commission's proposals. Most of the commission's recommendations were legislated into effect at once; the only matters which go to the people are those connected with the size of the city council, the length of the mayor's term, and the methods of making nominations.

Much of the credit for the success with which most of the important recommendations of the commission were put through the legislature is due to the committee of one hundred, an organization formed solely to achieve this end.[1]

[1]For a further account of charter revision in Boston, see the note of Dr. Flack in Notes on Current Legislation.

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Immediately after the Boston charter bill had passed the legislature the governor appointed the permanent commission for which the measure provided. The chairman of this body, who receives a salary of $5000 per year, is ex-Congressman John A. Sullivan, a member of the finance commission and a prominent member of the democratic party. Four other members, who serve without pay, were also appointed. This body is given no powers of a mandatory nature; its sole duty is to investigate any action of any city authority which may seem worth investigating and to publish the results of such enquiry.

The Good Government Association of Cambridge, Mass., has been reorganized under the name of the Cambridge Taxpayers' Association. All members who pay annual taxes of over $100 contribute 2 per cent of their taxes and this money is used to employ the services of a paid secretary whose duty it is to look after the interests of the taxpayers at City Hall.

An interesting series of articles dealing with the proposed amendments to Chicago's charter have been published during the past few months in the Chicago *Evening Post.*

Among recent publications relating to the administration of foreign cities are A. Veber's *Le Socialisme municipal* (Paris: Giard & Brière, 1908, pp. 63); H. S. Lunn's *Municipal Lessons from Southern Germany* (London: Fisher Unwin. 1908, pp. 148); J. Le Valois's *Le régime de l'électricité à Paris* (Paris: Giard & Brière, 1909, pp. 154); P. Ducceschi, *La municipalizazione dei puoblici servizi* (Turin, 1908); P. Morel's *La police à Paris* (Paris, 1908); and A. Ramelli's *Des attributions de la commune en matière civile et commerciale* (Paris: Rousseau, 1908).

The Civic League of St. Louis appointed a charter revision committee to frame suggestions concerning the proposed new charter for the city and after careful study and deliberation this committee has presented to the league the results of its sittings. The report has been printed under the title of A Plan for a New City Charter. Fourteen propositions have been agreed upon and these are stated in axiomatic form, but each is accompanied by a page or two of comment setting forth the reasons which led the committee to agree upon each successive point. The whole forms a highly interesting and instructive document.

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The William H. Baldwin Prize of $100 offered by the National Municipal League for the best essay on The Practical Working of Government in Some Large American City has been awarded to Henry Warren Cleary of the Junior Class in Harvard College, with honorable mention of Francis S. Wyner of the same class in the same institution. Fifteen essays were presented in competition by students from seven different colleges and universities. The judges were Elliott H. Pendleton, Esq., of Cincinnati; Mr. John A. Butler, of Milwaukee, and Prof. Augustus Raymond Hatton, of Western Reserve University. The subject for next year's Baldwin prize competition is City Government by Commission, and a descriptive circular concerning the terms of the award may be had on application to Hon. Clinton Rogers Woodruff, Secretary of the National Municipal League, North American Building, Philadelphia, Pa. Competitors must be "undergraduate students in some American college or university which offers distinct and independent instruction in municipal government."

Hon. Nathan Matthews, ex-mayor of Boston and chairman of the commission which drew up the new Boston charter, has accepted an invitation to give a course of lectures at Harvard next year on The Government of the City of Boston. Mr. Matthews is well known to students of government throughout the United States owing to his *Municipal History of Boston* which he published several years ago.

A new volume on *Municipal Government*, by Prof. F. J. Goodnow, is announced to appear this autumn.

Nine Elections in One Year.

F. H. GARVER.

Recently, certain influences have tended greatly to increase the number of elections in many states and localities. Chief among these influences have been the growing tendency to put into actual operation the principles of the primary and of the referendum. A concrete example may be seen in the experience of Sioux City, Iowa, during the year 1908. In this town of 50,000 inhabitants nine regular or special elections were held during the year named. The essential facts concerning these elections are as follows:

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January 21. Special election on the commission plan of government. Active campaign waged. Plan defeated by a majority of 329 in a total vote of 4237.

February 24. The city primary. Regular, biennial election. (State primary law passed in 1907.) Candidates nominated for eighteen city offices, including ten councilmen. Total vote on mayor, 3248. Contest on mayoralty in Republican party only.

March 9. School election. Regular, annual. Two directors and a school treasurer elected. A tax proposition to appropriate $60,000 for a school-house fund also voted on. Total vote on treasurer, 1641. Tax proposition carried by a majority of 204 in a total vote of 1484.

March 30. City election. Regular, biennial. Eight officers and a council of ten elected, each voter voting for eleven candidates. Total vote on mayor, 7159.

May 28. Special election on traction franchise. The Traction Company sought: (1) the right to extend its lines through additional streets and (2) a time extension of certain old franchises. Popular demand for universal transfers refused by the company. Franchises defeated by a majority of 34 in a total vote of 3868.

June 2. General primary. Regular, biennial election. Four parties in the field. Candidates nominated for United States senator, presidential electors-at-large (two), district elector, representative in congress, state senator, state representatives (two), nine state, nine county, and three township officers. Total, twenty-eight different offices.

August 11. Second special election on traction franchise. Practically a resubmission of franchises voted down on May 28, from which, however, the objectionable features had been eliminated. Franchises carried by a majority of 1449 in a total vote of 2923.

November 3. General election. Regular, biennial. Forty-three officials voted for, including thirteen presidential electors, twelve state officers, one congressman, one state senator, two state representatives, nine county officers and five township officers. Total vote on presidential electors, 8168. Total registration in city, 9188.

An amendment to the state constitution was also voted upon and carried by a majority of 2162 in a total vote of 4616, which equals 56.5 per cent of the vote cast for presidential lectors. At this election the republicans held a second primary on United States senator necessitated by the death of Senator Allison, their nominee in the June primary. Total vote, 4873.

November 17. Special election. Three separate propositions: (1)

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The Perry Creek conduit and tax for same. Both carried. Total vote on conduit, 3558; on tax, 3496.

(2) The Bacon Creek conduit and tax for same. Both carried. Total vote on conduit, 3567; on tax, 3519.

(3) Gas franchise. Several changes in former franchises asked for by the Gas and Electric Company. Proposition defeated by a majority of 281 in a total vote of 3065.

Of these nine elections, five were regular and four were special. Of the former, four were biennial and one was annual. Two of the biennial elections were primaries, one a city primary, the other general. The adoption of the primary principle in Iowa has really added only one election, and that biennial, in Sioux City, because just prior to the passage of the state primary law an amendment to the constitution abolished annual state elections in favor of biennial.

The principle of the referendum was involved in six of the nine elections mentioned above, while that of the initiative was clearly employed in connection with several.

In addition to choosing ninety-four officers, or the equivalent of that number, during the year, the voters had submitted to them ten separate propositions, of which seven were voted or carried and three rejected. Discrimination was especially shown in connection with the last election when four propositions were affirmatively voted and one rejected. The same may be said of the traction franchise in that it was once rejected and only accepted after it had been materially modified.

One very noticeable feature of these elections was the smallness of the vote cast at the special elections. While 8168 votes were counted for presidential elections on November 3, not much over half as many were cast at any of the special elections. The vote on the commission plan of government was 4237 or 51.8 per cent of the vote for President. The vote on the gas franchise, 3065, equaled 37.5 per cent, while that on the school tax, 1641, amounted to only 20 per cent of the same total.

When elections are too frequent voters are bound to lose some of their interest no matter how important the issues may be. Yet the relatively small vote on some of the foregoing propositions should not be over-emphasized. Special elections seldom bring out the full vote. The phenomenon is parallel to another one, namely, that side-issues seldom do any better. This may be illustrated in the election of November 3, mentioned above, upon which occasion an amendment to the state constitution received in Sioux City 4616 votes as against 8168 for presidential electors.

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Personal and Bibliographical

J. W. GARNER.

Prof. H. R. Mussey of the department of sociology of the University of Pennsylvania has accepted a call to a similar chair at Columbia. The place which he vacates at Pennsylvania will be filled by Prof. J. P. Litchtenberger of New York.

Prof. L. S. Rowe of the University of Pennsylvania is spending his summer in Mexico where he is making a study of the federal system of that country.

Mr. Harry E. Smith has been appointed assistant in politics in Cornell University. Dr. Warren B. Catlin will give instruction in both economics and politics.

Prof. George Grafton Wilson, who was one of the American delegates to the International Naval Conference recently held at London, has resumed his duties at Brown University. While abroad he purchased many works for the Wheaton collection on International Law at Brown University, among them some rare editions of Grotius' *De Jure belli ac Pacis*. It may be mentioned in this connection that the Wheaton collection now includes copies of ninety-seven editions of this famous work and lacks but three of the known editions to make the set complete.

Mr. Edward Porritt has been reappointed special lecturer in the department of government and history in Harvard University for the coming academic year. His lectures will deal with English Party History, and Responsible Government in the British Colonies.

Dr. F. W. Coker, instructor in political science in the University of Missouri for the past two years has accepted a position as preceptor with the rank of instructor in history, economics and political science in Princeton University.

Mr. Walter J. Shepard of the University of Wisconsin has been called to an assistant professorship of political science in the Ohio State University. Mr. Shepard received a bachelor's degree from the University of Oregon and also from Harvard, and has completed his residence require-

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ments at Harvard for the doctor's degree. He studied two years at Berlin and Heidelberg as a traveling fellow from Harvard. His thesis on *Ministerial Responsibility* will be published at an early date.

Prof. John B. Parkinson, professor of political science in the University of Wisconsin and vice-president of the University, has retired from active service. He has been connected with the University of Wisconsin for forty-six years.

Fréderic de Martens, one of the most distinguished publicists and jurisconsults in Europe, a noted diplomat and a high authority on international law, died suddenly on June 20. He was born in 1845 in the province of Livonia, entered the Russian ministry of foreign affairs in 1868 and became professor of international law in the University of St. Petersburg in 1871, a position which he held until 1907. Since 1882 he had been a permanent member of the council for foreign affairs and had represented the Russian government in many international congresses. He was a delegate to both the Hague peace conferences and was president of the second commission in the first conference. He was a member of the permanent international Hague Court, served as arbitrator in a number of international cases, and was one of the Russian peace commissioners that concluded the treaty of Portsmouth in 1905. He was the author of various treatises on international law and bore honorary degrees from many universities, including Oxford, Cambridge, Edinburgh and Yale. His best known work entitled *Le Droit International des Nations Civilisées* (2 vols, 1884–1888) was translated into the German, French, Spanish, Japanese, Persian and Servian languages. He also edited a collection of treaties between Russia and foreign powers (15 vols., 1874–1909).

Prof. John A. Fairlie has accepted a call to an associate-professorship of public administration in the University of Illinois. He was born in Glasgow, Scotland, received his academic training at Harvard and Columbia, from which latter university he took the doctor's degree in 1898. Since 1900 he has been a member of the faculty of the University of Michigan. Professor Fairlie has served as secretary of the Michigan Political Science Association and of the Michigan League of Municipalities, was a delegate to the convention which framed the present constitution of the state of Michigan, and is now employed as a special agent of the United States Bureau of Corporations in the preparation of a report

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on inland waterways. He has been an extensive contributor to the literature of public administration, and is the author of *Centralization of Administration in New York State* (1898); *Municipal Administration* (1901); *National Administration of the United States* (1905); *Local Government in the United States* (1906); and *Essays in Municipal Administration* (1908).

The *Rivista di Diritto Pubblico e della pubblica Amministrazione in Italia* is a monthly journal begun in January, 1909, as a continuation of the *Archivio di Diritto Pubblico.* The *Rivista* is published at Milan by the Società Editrice Libraria, and is edited by Professors L. Luzzatti, V. E. Orlando, A. Salandra, A. Codacci-Pisanelli, C. Calisse, and Drs. S. D'Amelio and C. Corradini. The *Rivista* devotes special attention to judicial decisions in the field of Italian public law.

Judge William L. Penfield, formerly solicitor of the Department of State (1897–1905), died in Washington May 9, in the sixty-third year of his age. Mr. Penfield was a high authority on international law and during his term as solicitor exercised a large influence in shaping the policies of the Department of State He acted as counsel for the United States in the "Pious Fund" case, for the United States and Venezuela in the Venezuelan arbitration case before the Hague Tribunal in 1903, and for the United States in a number of other important arbitration cases. In 1905 he was special commissioner to Brazil.

It has been announced that the arbitration court which will sit at the Hague in the fisheries dispute between the United States and Great Britain will be composed of Dr. Lammasch, a distinguished Austrian publicist; Señor Drago, of Argentina; Dr. Lohman, of the Netherlands; Sir Charles Fitzpatrick a well-known Canadian jurist, and Judge George Gray, of the United States Circuit Court.

The United States Department of State has established a "school of diplomacy" at Washington for giving instruction to newly appointed secretaries of legations and embassies. New appointees will be required to report at the Department of State before leaving for their posts and will be placed under the instruction of an experienced diplomat, who will endeavor to familiarize them with the more important of their duties. Lectures will also be delivered before the "school" by distinguished economists and jurists.

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The first volume of a new and enlarged edition (the 3d) of Conrad's *Handwörterbuch der Staatswissenschaften*" has made its appearance. The new edition is to be published in eight volumes of about 6000 pages (Jena: Gustav Fischer, 1909). A new edition also of Bachem's *Staatslexicon* is appearing from Herder's Verlag in Freiburg, i. B. The first volume was published several months ago.

The International Union of Ethical Societies has proposed that there be held in London, in October, 1910, a Universal Races Congress. The object of the congress will be "to discuss the larger racial issues in the light of modern knowledge and the modern conscience, with a view to encouraging a good understanding, friendly feelings, and hearty co-operation among races and nations." Among the specific questions proposed for discussion are several relating to international affairs and constitutional development. Further information regarding the congress may be obtained from Mr. G. Spiller, 63 South Hill Park, Hampstead, London.

The conditions governing the sixth annual competition for the Hart, Schaffner and Marx prizes (amounting to $1500), for the best essays on certain topics relating to commerce and industry, have been announced. The prizes will be given in three classes consisting of persons who have received their bachelor's degree from an American college since 1896, undergraduates, and persons without academic training. Essays submitted in competition for a prize must be in the hands of Prof. J. Laurence Laughlin, of the University of Chicago, by June 1, 1910. The subjects for the first two classes of competitors are: The Effect of Labor Unions on International Trade, The Best Means of Raising the Wages of the Unskilled, A Comparison Between the Theory and the Actual Practice of Protectionism in the United States, A Scheme for an Ideal Monetary System for the United States, The True Relation of the Central Government to Trusts, How Much of J. S. Mill's Economic System Survives, and A Central Bank as a Factor in a Financial Crisis.

The *Proceedings of the Conference of Governors at the White House, 1908*, called by President Roosevelt to consider ways and means for conserving the natural resources of the country, has been published by the government printing office, and is for sale at the price of seventy-five cents.

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Prof. Paul S. Reinsch has published a volume of *Readings on American Federal Government* designed to be used as a source book in connection with the teaching of American government in the colleges and universities (New York: Ginn and Company, 1909, 846 pages). The readings consist of more than one hundred selections carefully chosen from the *Congressional Record* and other public documents, from text books of authority and from periodical literature relating to such matters as the organization and powers of the executive, the senate, the house of representatives, the treaty-making power, the procedure of congress, financial legislation, the executive departments, the army and navy, the foreign service, the civil service, the courts, centralization, national conventions, etc. The selections are arranged under sixteen appropriate headings and there is an index and a table of contents. This volume makes accessible for college students a large amount of valuable source material for collateral reading, and thus furnishes an opportunity for applying to the study of government the case method which has become so effective in the teaching of law.

Mr. John Graham Brooks' *As Others See Us* (New York: The Macmillan Company, 1909, 365 pages) is a review of foreign criticism of American manners and institutions by English, French and German travelers in America and students of American life. Mr. Brooks himself does not refrain from dissecting and analyzing some of the chief faults of Americans, such as their "talent for bragging," their provincialism and other peculiarities. His criticism is for the most part well directed and the effect would be wholesome and beneficial if his book were widely read by Americans, especially by those who think we have nothing to learn from Europe.

Books on the negro problem continue to appear. The latest and in many respects one of the most original, *The Negro Problem; Abraham Lincoln's Solution* is by William P. Pickett, of the New York Bar (New York: Putnams, 1909, 580 pages). Mr. Pickett's proposed solution of the negro problem is "the absolute and unequivocal recognition and declaration of the fact that the negro race is, as a matter of present condition, alien, inferior, and unassimilable, and is therefore not qualified to constitute an element of future American citizenship"; the modification of the Fourteenth Amendment so as to provide that all persons of the negro race born after the year 1925 shall be excluded from the national citizenship; the repeal of the second section of the same amendment as

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being inconsistent with a republican form of government; the repeal of all civil rights acts, state and national, and of all other provisions of law designed to confer upon the negro privileges other than those based upon his intrinsic merit and demonstrated service to society; the enactment of laws in all the states prohibiting the intermarriage of the white and negro races; the absolute prohibition of the immigration of persons of negro blood; and finally "a carefully devised and generously assisted plan" to induce the voluntary emigration of negroes to other countries. The author suggests that the United States acquire "one or more tracts of territory suitable for the purposes of colonization and if found necessary or feasible the assumption of a protectorate for that purpose over Hayti and Liberia." He would then have the United States offer liberal bounties to individuals and families to withdraw from this country and establish themselves in the above-mentioned foreign territories. This according to Mr. Pickett was Lincoln's plan for solving the negro problem.

The History of Cumulative Voting and Minority Representation in Illinois 1870–1908, by Blaine F. Moore, is the title of a thesis prepared in the department of political science in the University of Illinois and published as one of the University studies (Urbana-Champaign: University press, 1909, 48 pages). The study embodies the results of an inquiry into the actual workings of the cumulative voting system for choosing representatives in the state legislature and a discussion of the merits and demerits of the scheme as they have been brought to light during the forty years that have elapsed since its adoption as a part of the constitution of Illinois. The author shows that in only three instances since 1870 has the system failed to give the principal minority party in each legislative district at least one representative and also, that with only three exceptions, third parties such as the prohibitionists and socialists have always been able to choose from two to five members in each legislature. It sometimes happens, however, that the system breaks down in practice and the minority party in a district succeeds in electing two members and the majority only one. This has happened twenty-four times in or since 1870. The proposals of certain reformers that each party be required by law to nominate three candidates in each district so as to give the voters a wider range of choice is shown by Mr. Moore to be impracticable and if adopted would defeat the principle of minority representation.

The Institut de droit comparé was founded at Brussels in January, 1908, under the presidency of M. Emile Stocquart. The aim of the new

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organization is particularly to study the current laws of the various countries and to publish the most important of such laws in French translation. The Institut has begun the publication of a *Revue*, in the first numbers of which much space has been given to federal and state legislation in the United States.

The Evolution of Seward's Mexican Policy by Prof. J. M. Callahan is the title of a contribution to the West Virginia University Studies in American History (Morgantown: West Virginia University, 1909, 88 pages). In this study Professor Callahan reviews the causes which led to French intervention in Mexico and traces the history of the diplomatic controversy between the United States and France which culminated in the virtual demand of the United States for the withdrawal of the French troops.

In order to meet the demand in the United States for information regarding Cuba, its population, resources, products, climate, etc., the bureau of the census has prepared and published an attractive hand book entitled *Cuba, Its Population and Resources* (Washington: Government Printing office, 1909, 273 pages). The data contained in the hand book was compiled from the Cuban Census reports of 1899 and 1907 and from a handbook on Cuba prepared by Senor Gonzalo de Quesada and published in 1905 by the International Bureau of the American Republics.

Among recent books relating to Hungary two of the most important are Count Julius Andràssy's *Development of Hungarian Constitutional Liberty* (London: Kegan Paul, 1908, pp. 465); and R. W. Seton-Watson's *Racial Problems in Hungary* (London: Constable, 1908, pp. xxvii, 540). Andràssy's work is purely historical and comes down only to 1619. Seton-Watson is well-known for his writings upon Hungarian political questions under the pseudonym of Scotus Viator; his standpoint is strongly anti-Magyar, and he insists that the only solution of the question is the grant of universal suffrage, which will give the non-Magyars control of Hungarian affairs. A special twentieth century edition of Huszadik's Század's *La Hongrie Contemporaine et le suffrage universel* has lately appeared from the press of Giard et Brière (Paris: 1909, 272 pages).

Henry S. Drinker, of the Philadelphia bar and lecturer in the law department of the University of Pennsylvania has written an elaborate treatise

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on the interstate commerce act, in two volumes (Chicago: Callaghan & Co., 1909, about 1200 pages). The work is a combination of textbook and digest. The first volume contains a discussion of all the decisions of the interstate commerce commission and of the courts relating to the interstate commerce acts and the amendments thereto, while the second volume contains a digest of the decisions and the texts of the various acts regulating interstate commerce. The work has been prepared with a view to the special needs of lawyers rather than for the general student of constitutional law, yet it is useful to both.

The Russell Sage Foundation has published an attractive volume entitled *Report on the Desirability of Establishing an Employment Bureau in the City of New York* (New York: Charities Publication Committee, 1909, 238 pages). The body of the report was prepared by Mr. Edward T. Devine acting for the Charity Organization Society of New York. A large part of the volume is taken up with letters from experts whose opinions were sought, extracts from reports and addresses, and suggested plans for the proposed bureaus.

The Boston Book Company has begun the publication of a magazine subject-index, the first volume of which has appeared (275 pages). It is, as the name suggests, a subject index, not an author or title index. It covers the subjects in seventy-nine American and English periodicals, forty-four of which are indexed from their first issues to December 31, 1907. The favor with which the project has been received has led the publishers to start also an annual magazine subject-index, the volume for 1908 having already appeared. It covers the articles in one hundred and twenty American and English periodicals and society publications.

The Report of the New York State Public Service Commission, First District, covering the first six months of the work of the commission, ending December 31, 1907, has been published in two volumes (Albany: The J. B. Lyon Company, 1908, 733 and 737 pages). The most important part of the report is that which deals wth the rapid transit situation in New York City. In order to extend the existing rapid transit facilities by municipal action the commission recommends the adoption of an amendment to the state constitution exempting from the 10 per cent limitation on municipal debts bonds issued by the city for the construction of new lines, and such an amendment was proposed by the legislature at its last session. It also recommends certain changes in the

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rapid transit law so as to give the commission greater power in securing private capital for the extension of present facilities. It suggests the construction of new lines in various parts of the city, to cost half a billion dollars. The report contains a great deal of valuable information, statistical and otherwise, relating to the transportation system of New York, it finances, street railway accidents, etc.

Sir J. G. Bourinot's *Government of Canada* has appeared in a new and revised edition with a chapter by Edward Porritt.

The Library of Congress has recently issued *A List of Books Relating to the Supreme Court of the United States.* (Washington: Government Printing Office 1909, pp. 124.)

A new periodical in the field of administrative law is the *Württembergische Zeitschrift für Rechtspflege und Verwaltung,* edited by Drs. Fr. Haller and Ed. Matter, and published by G. Hess at Stuttgart.

Die Rechtsprechung des Reichs- und Kammergerichts auf den Gebieten des oeffentlichen Rechts, herausgegeben von B. von Kamptz und Dr. H. Delius (Berlin: Carl Heymann, 1906–07, 2 vols), is a revision of the same authors' *Rechtsprechung des königlich preussischen Oberverwaltungsgerichts* (4 vols. 1896–98.)

One of the most important blue books issued by the British government in recent years is the *Report of the Royal Commission on the Poor Laws and the State of the Unemployed,* a bulky volume of over twelve hundred pages (London: 1909, P. S. King and Son). The commission was appointed in 1905 and was composed of a number of persons well known in the public life of England, economists and administrative experts, including several women. Altogether the commission was remarkable for the ability and learning of its members, and its report is the most comprehensive and thorough of its kind made since 1834. The commission held over two hundred sessions, examined nearly five hundred witnesses and received the written statements of nine hundred other persons, visited some two hundred unions and four hundred institutions, and attended one hundred and sixty meetings of local bodies. It did not confine its investigations to England alone but extended its inquiries to other countries as well and collected a vast amount of data regarding the causes and extent of unemployment, financial depression, labor

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conditions, trade, emigration, etc. The investigation revealed what the commission described as a distressing situation. Notwithstanding the enormous sums annually expended by the state for poor relief the country is afflicted with a vast army of paupers and the signs indicate an increase rather than a decrease in the number. The commission expresses the opinion that something is "radically wrong" in the social organization and that the difficulty cannot be remedied by a mere expenditure of public funds, however lavish. Concerning the remedies for existing conditions the commission is divided, the majority recommending certain changes in the existing laws and practices, the minority certain others. The report of the commission together with a summary and explanatory notes, by Helen Bosanquet has been published by Macmillan and Company. The minority report edited by Sydney and Beatrice Webb in two volumes, (604 and 344 pages) has been published by Longmans, Green and Company. Volume 1 is entitled *The Break Up of the Poor Law*; Volume two, *The Public Organization of the Labor Market.*"

A series of articles by Prof. Muirhead of Birmingham dealing with the various matters treated by the commission, together with an introduction by Sir Oliver Lodge, has been published by P. S. King and Son under the title *The Principles in Common and at Issue in the Reports of the Poor Law Commission.* These articles attempt to bring out the main features of the results of the investigation, to compare and criticise the proposals of the majority and the minority, and to suggest how what is valuable and practicable in both may be combined in a comprehensive system that will be acceptable to all political parties.

A History of the Roman-Dutch Law, by J. W. Wessels (Grahamstown, Cape Colony: The African Book Company, 1908, pp. xv, 791) is a study by a South African jurist of Roman-Dutch law in the English colonies of South Africa. The law of Holland, based on that of Rome, was transplanted to the Cape of Good Hope in the seventeenth century by Dutch immigrants and in time spread to the Transvaal, the Orange Free State and Natal, where it gained such a foothold that it was never displaced by the English law, though the latter now seems to be gaining the ascendancy. The work is divided into two parts, one dealing with the development in general of the Roman-Dutch system, the other with the historical development of the law relating to specific subjects.

Insurance Against Unemployment is the title of a book by David F. Schloss, an English writer who has attempted to describe the various

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European plans for relieving the distress caused by unemployment, particularly the system of insurance, the benefits from which are supplemented by government subventions. Such methods are employed in Belgium, France, Germany, Italy, Holland, Switzerland, Norway and Denmark and proposals with that end in view have recently been discussed in England. The information contained in the volume under consideration will therefore be timely and instructive. An appendix contains the rules and regulations that have been adopted by a number of European cities governing the granting of aid to persons so insured (London: P. S. King and Son, 1909, pp. 130).

A National Conference on Criminal Law and Criminology was held at Chicago on June 7 and 8 in celebration of the fiftieth anniversary of the founding of the Northwestern University law school. About one hundred and fifty delegates from various parts of the country were in attendance. They consisted mostly of judges, practicing lawyers, criminologists, physicians, sociologists and university professors. One hundred and thirty-three questions covering the whole field of criminal law and criminology were considered in detail by subdivisions of the conference and of these questions, ten of the most important were selected for consideration at a conference to be held next year. Resolutions relating to various questions connected with the penal treatment of offenders, the organization, appointment and training of officials who have to do with the administration of the criminal law, and proposed reforms in our present methods of criminal procedure were adopted by the conference as a whole. The conference decided to form itself into a permanent organization to be known as the American Institute of Criminal Law and Criminology, whose object shall be to further the scientific study of crime, criminal law and procedure, to formulate and promote measures for solving the problems connected therewith and to coördinate the efforts of individuals and of organizations interested in the administration of certain and speedy justice. Prof. John H. Wigmore was elected president of the new organization The conference also took steps looking toward the translation into English of important treatises on criminal law and criminology in foreign languages, and the establishment of a journal to be devoted to the study of criminal law and procedure. It is somewhat singular that although there are at the present time some twenty-five such periodicals published in foreign languages there is as yet none published in English.

An encouraging feature of the conference was the ready, not to say

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enthusiastic coöperation of the judges and members of the bar, who joined with the lay delegates in condemning our existing methods of administering justice as antiquated in many respects, and in recommending the adoption of important reforms, in the interest of a more efficient and speedy administration of justice.

The National Conference on Criminal Law and Criminology served to bring forth two bibliographies of criminal law: *A Systematical List of the Principal Works on Criminal Law and Criminology* (The Hague: Martinus Nijhoff, 1909, pp. 59); and *A Preliminary Bibliography of Modern Criminal Law and Criminology*, by John H. Wigmore (Chicago, 1909: Northwestern University Law School. Gary Library of Law. Bulletin No. 1. Pp. xii, 128). Nijhoff's list is arranged in a systematic manner and is useful for the literature of continental Europe, but does not include American works; Professor Wigmore's bibliography is more complete, but its usefulness is diminished by the fact that it is arranged alphabetically by authors.

The Second National Peace Congress was held at Chicago May 3–5, an elaborate program of speech-making being carried out. About two hundred delegates were present from all sections of the country, representing many organizations, professions, and institutions. Not less than fifty addresses dealing with various aspects of the peace movement were delivered by prominent leaders in all the various walks of life, and representing various foreign countries. These addresses together with the reports made and resolutions adopted are to be printed in a volume and may be obtained by addressing the secretary, Royal L. Melendy, 174 Adams Street, Chicago.

The third annual meeting of the American Society of International Law was held at the New Willard Hotel, Washington, D. C., April 23 and 24. The president of the Society, Senator Elihu Root, delivered the annual address on the subject The Relations Between the Jurisdiction of National Courts and International Arbitration. Arbitration as a Judicial Remedy was discussed by Hon. John W. Foster, Hon. Wayne McVeagh and others. Admirals Sperry and Stockton reviewed the work of the recent International Naval Conference held at London. Other topics discussed by distinguished publicists were The Nature and Definition of Political Offences in International Extradition, The Development of International Law by Judicial Decisions in the United States,

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The Constitution and Powers which an International Court of Arbitral Justice Should Possess, and The Equality of Nations. The meeting closed with a banquet at which Attorney-General Wickersham, Dr. Lyman Abbott and Prof. R. S. Woodward were the principal speakers. President Root and the other officers were re-elected for another term.

Preparations are already being made for the Fourth International Conference of the American Republics to be held next year, and a tentative programme has been adopted by a committee appointed for this purpose. In pursuance of a resolution adopted by the Third Conference held at Rio de Janeiro in 1906, the governing board of the International Bureau at Washington was empowered to choose the time and place for the meeting and arrange a program. The board has chosen the city of Buenos Aires as the place but has not yet fixed the exact date of the meeting. In this connection attention may be called to an article in the April *Bulletin* of the International Bureau of the American Republics on the First Pan-American Scientific Congress held at Santiago, Chile last winter, at which eighteen delegates from the United States were present, ten representing the national government, the others the universities of Chicago, Cornell, Harvard, Michigan, Minnesota, Illinois, Northwestern, and Princeton.

The *Bulletin* of the International Bureau of American Republics is publishing a series of articles on municipal organization in the Latin American Republics. The cities treated since the beginning of the present year are Mexico, Santiago de Chile, Lima, Havana and Rio de Janeiro. Students of municipal socialism will be interested in an article entitled "Theaters and Opera Houses, National and Municipal, in Latin America," published in the May number of the *Bulletin* of the present year.

M. Paul Pic's *Traitê elementaire de lêgislation industrielle* has appeared in a new edition (Paris: Rousseau, 1909, 1121 pp.) The present edition is practically a new treatise and is an admirable work of instruction and of reference by a distinguished jurist and economist. It contains a critical analysis of the labor laws of France with the corresponding laws of foreign countries in parallel columns. The author dwells upon the rôle of the state in its relation to labor; discusses the socialistic and individualistic theories; traces the historical evolution of state regulation of labor from ancient times to the end of the nineteenth century; the

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administrative regulation of labor; labor bureaus, offices, ministries, etc.; industrial liberty; the right of association; the labor contract, arbitration and conciliation; the struggle between capital and labor and many other topics of a kindred nature. The Académie des Sciences Morales et Politiques has recognized the superior character of this standard work by crowning it with one of its prizes.

In a monograph entitled *Monographies de Droit Public* (Paris: Larose, 1909, 256 pp.) X. S. Combothecra, the author of many standard political writings, has collected and published a number of his studies some of which have heretofore appeared in different reviews. Among them may be noted the following essays: (1) Law; (2) The State, being largely a criticism of the views of Léon Duguit regarding the nature and origin of civil society; (3) The Civil Responsibility of the State; (4) Proportional Representation, with special reference to its application in the canton of Geneva; and (5) The fundamental laws of Russia under the new régime. In regard to the working of proportional representation in Geneva, M. Combothecra takes a pessimistic view. The results have not, he declares, been satisfactory. The minority represented in the legislature constitutes an obstructive element and converts what is intended to be a deliberative body into a debating society. No one of the eight parties represented in the Grand Council enjoys a preponderating influence and responsibility is consequently lacking. The result is general paralysis and legislative impotency.

Congrégations religieuses, by Maurice Félix (Paris: Rousseau, 1908, pp. 234) is an historical and legal study of the situation arising from the French laws of July 1, 1901, and July 7, 1904, relating to the status of religious congregations. In the application of these laws numerous difficulties have arisen and it is with certain of these problems that M. Félix deals. For purposes of treatment his study is divided into three parts: (1) the history of religious congregations; (2) the religious congregations and the law of 1901; (3) instruction and the religious congregations.

Emile Vercamer, a councillor before the mixed court of Alexandria, has written a monograph on judicial organization in Egypt under the title *De quelques réformes à introduire dans l'organisation judiciaire et la procédure de tribunaux mixtes égyptiens* (Bruxelles: Bruylant, 1908, 123 pages), in which he discusses certain reforms that the government pro-

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poses to introduce in order to render the administration of justice more expeditious and effective. The most important of these proposals is that for a reduction in the number of magistrates in the courts of first instance and of appeal, in both of which the number has been excessive owing to the demand of foreign powers to be represented by judges of their own nationality.

The stream of books on the Hague conferences continues unabated. One of the latest contributions is a French work entitled *Les lois de la guerre et les deux Conférences de la Haye* (1899–1907), by Paul Boidin, an army officer and instructor in the École Militaire of Rambouillet (Paris: Pedone, 1909). The work is divided into two parts. In the first part the author considers the motives which animate the advocates and opponents of war, explains how the conduct of war ought to be regulated, considers what ought to be undertaken by such conferences as those held at the Hague, and dwells upon the proper field of the application of the law of war. In part two the author reviews in a general way the origin and work of the two Hague conferences and analyzes and criticises in particular the work of the second, third and fourth commissions.

Die Staats- und Völkerrechtlichen Ideen von Peter Dubois, by Heinreich Meyer (Marburg: Ebel, 1908, pp. 119) is an interesting monograph containing a discussion of the political doctrines of a legist who played an important part in the controversy occasioned by the struggle between Philippe of France and Pope Boniface VIII. Dubois, like most of the writers of his time, was a partisan of the monarchical form of government though he was opposed to a universal monarchy. He attributed the origin of the state to occupation and prescription beginning with Adam and Eve, a view quite natural in the middle ages when the feudal system made the exercise of sovereign rights dependent upon possession of the soil. Dubois advocated a curious scheme for the federation of the states of the world through a congress composed of all the heads of states, which was to be charged with regulating all questions touching their common interests. An important purpose of this federation was the maintenance of universal peace and to this end he proposed the establishment of a permanent court of arbitration composed partly of ecclesiastics and partly of lay members, both to be elected by a council convoked by the pope.

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A new law lexicon entitled *Handwörterbuch der gesamten Rechts- und Staatswissenschaften* has been brought out in two volumes by Prof. Paul Posener, with the coöperation of a group of distinguished German jurists and professors (Berlin: Erich Weber, 1909, about 2400 pages). The work covers the whole field of jurisprudence and political science, devoting special attention to practical legal science. Many of the articles have been contributed by judges and practicing lawyers.

The *Journal of the Society of Comparative Legislation* for April, 1909 (new series, no. xx), contains, besides the usual notes and reviews of legislation, a number of important articles. Among them may be noted two contributions on The Great Jurists of the World (Vico and Zouche); Some Points in the Law of Blockade, by Lord Justice Kennedy; The Papacy and International Law, by A. P. Higgins, Esq.; Trade Domicile in War, by Professor Westlake; The International Law Association at Pesth, by Thos. Baty, Esq.; Judiciary and Statute Law, by Julius Hirschfeld; and The New Turkish Constitution, by Norman Bentwich, Esq.

Prof. Joseph Kohler, of the University of Berlin, has lately published a treatise on the philosophy of law, entitled *Lehrbuch der Rechtsphilosophie* (Berlin and Leipzig: Rothschild, 1909, pp. 219).

Untersuchungen über das Wahlprüfungsrecht des deutschen Reichstags, by Guido Leser (Leipzig: Duncker u. Humblot, 1908, pp. 148), is a new volume in Jellinek and Anschütz's Staats- und Völkerrechtliche Abhandlungen and deals with the power of the Reichstag in judging of the election and qualifications of its members. After a short survey of the "Legitimationsprüfung" of the parliaments of France, Italy and the larger German states, the author takes up and considers the meaning of article 26 of the imperial constitution, which declares that "the Reichstag shall examine the legitimation of its own members and decide thereon." The author discusses various hypothetical questions relating to the power of the Reichstag to pass upon the election of its members and lays down the rules and limitations to which it is subject in exercising the *Wahlprüfungsrecht*.

A recent contribution to the literature of German imperial constitutional law is a book by Robert Beutler entitled *Die Reichshank, Ihre rechtliche Natur und Zweckbestimmung* (Berlin: Rothschild, 1909, pp. 253), being a study of the Imperial Bank as an "öffentlich-rechtliche Stiftung,"

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a "Staatsanstalt" of the empire. The author considers the Imperial Bank from the standpoint of its public law relations and its place as a public law institution without regard to its economic and financial aspects.

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BOOK REVIEWS

France and the Alliances: the Struggle for the Balance of Power. By ANDRE TARDIEU. (New York: The Macmillan Company. 1908. Pp. x, 314.)

This is the story of the political regeneration of France. It is the story of the struggle between France and Germany, from the fall of the Second Empire to the conference of Algeciras. It is also a brief but keen survey of the diplomatic history of Europe during that period.

The Franco-Prussian War practically reduced France to the position of a second-class power. The republican government, which emerged from the national ruin, was not expected, even by its friends, to last for two generations. It was supported by Bismarck because he did not believe it capable of strengthening the country internally or of forming foreign alliances. In the very nature of things it would be regarded with distrust and aversion by monarchical Europe.

Thirty-eight years wrought a great change. In spite of the constant opposition of her powerful and hostile neighbor, and the diplomatic blunders of her statesmen, France has won her way to a foremost place among the European powers.

She has demonstrated the enduring quality of the Third Republic and the essential reliability of her people. She has a firm alliance with Russia, and through her understandings with England, Italy and Spain, the support of those countries.

The primary cause of this diplomatic success is to be found in the industry and thrift of her people.

The Franco-Russian alliance was good diplomacy for both countries. But the fact that in 1888 France was able, and began to float, for her future ally, the loans that have since assumed enormous proportions was principally responsible for the signing of the treaty of alliance in 1891. Nor would Italy so soon have forgotten Tunisia, if French gold had not averted a serious financial crisis for that country.

The Russian alliance made France secure in her defence against Germany and the Triple Alliance. The understandings with England,

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Italy and Spain enabled her even to assume an aggressive attitude and to proceed with confidence in the development of her colonial empire.

It is with the formation of the alliance, the gradual development of the French understandings and the final triumph of the diplomacy of the Third Republic that the book deals.

M. Tardieu sees two powers, Germany and France, occupying the center of the European stage during the last two generations, Germany, suddenly grown abnormally powerful, striving to hold and extend her power and to keep France weak and isolated, France crippled by her rival endeavoring to win the confidence and support of Europe.

He says in his preface, "To show them France of today, in presence of Europe and the world, such as she has been shaped, after painful experiences, by thirty-eight years of sustained effort and diplomatic action, is the aim that I have proposed to myself." Further on he says, "A Frenchman could not treat such a subject otherwise than from a French point of view. But to try to understand one's adversaries is already to do them justice. With this spirit of justice I have endeavored to inspire myself, yet not seeking to hide errors, which indeed do not fundamentally affect the whole of the French achievement."

In reading the book one is impressed with the feeling that he has admirably succeeded in his endeavor. He is remarkably just and fair in his views, especially with reference to German statesmen. Indeed his most severe criticisms are leveled at the follies and political mistakes of his countrymen.

M. Tardieu has not attempted to make out a case for France, but to recognize facts and to draw the necessary conclusions. Thus in the Hartman case, the rightness or wrongness of France, in refusing to extradite him, would not have affected Russian feeling in the matter, and he does not trouble to point out that the nihilist refugee found a safe asylum in England after leaving France.

In regard to German diplomacy he recognizes that it has been neither incoherent nor trifling, In connection with the Algeciras conference he admirably sums up his attitude toward Germany and the Franco-German question, as follows: "One may recall, at this distance from the past, Bismarck's saying that 'indignation is not a political state of mind.' And as one understands better, one is less inclined to grow angry. The prodigious display of effort, activity, and intrigue which distinguished German policy during those three months could not be explained—and would be blamable and ridiculous—if Morocco had been

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the only stake that was being played for, if the only questions had been those of deciding about a few gendarmes and meagre custom duties. Let it rather be supposed that this effort and activity and intrigue were meant to build up, on the threshold of the twentieth century, the most extraordinary structure of political power that had ever been raised since the time of Napoleon I; to save Bismarck's work from the assault of age; to secure Germany in the domination of Europe that had belonged to her from 1871 to 1891—and even to 1902; to oppose these new combinations by an alliance that had gloriously won its laurels in a series of trials, and with it to overcome them. Then one may admit that the sometime exaggerated ardor of German policy was not unjustifiable. "Its only crime in the eyes of history will be that of having been useless."

As the author says, the plan of the book resulted from the subject itself. France and the Russian Alliance, France and the English "Entente," France and the Mediterranean Understandings, France and the Triple Alliance, Conflict of the Alliances, The New Asiatic and European Understandings, these chapters follow one another in logical order. The chapter on France and the United States, although of little importance to the main argument of the book, was necessary in view of the immediate circumstances that produced it.

In conclusion, M. Tardieu gives us an interesting exposition of the present attitude of France in relation to Germany.

M. Tardieu is singularly well qualified by training and opportunity to write such a book as this. It is a valuable addition to the history of European diplomacy of our time, and withal it is so readable a book that it should appeal, not only to students, but to all who are interested in world affairs.

GEORGE FREDERICK ANDREWS.

The Russian Army and the Japanese War. By GENERAL KUROPATKIN. Translated by Captain A. B. Lindsay and edited by Major E. D. Swinton, D.S.O., R.E. With maps and illustrations. In two volumes. (New York. E. P. Dutton and Company. 1909. Pp. xxi, 309; vii, 348.)

As we learn from the translator's preface and author's introduction, these extremely interesting and important volumes are a translation of the fourth (together with the conclusion of the third) volume of a much

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larger work which was suppressed in Russia almost immediately after its publication. That portion of the work which is not translated (i. e., the first two volumes and the bulk of the third) appears to have been of purely technical or military interest and almost wholly devoted to accounts of the three battles of Liao-yang, the Sha Ho, and Mukden. Of these volumes, only the third (containing the account of the battle of Mukden and the summary of the War) was written by General Kuropatkin himself.

This summary appears as the first chapter of the translation before us. It contains an historical résumé of the tasks accomplished by the Russian army during the eighteenth and nineteenth centuries, and includes statistics on the human cost of war which should furnish useful ammunition to the pacifists. In this connection, special attention should be called to the table on I, p. 99. If correct, it shows that the losses in killed and wounded during the nineteenth century were almost double those of the eighteenth—a view which, as the editor remarks, is not generally accepted.

The second chapter contains General Kuropatkin's conclusions on the strategical value of the Russian frontiers. These are based on what is evidently a thorough study of the subject, and were embodied in a report which he made in 1900 when he was minister of war. This portion of the General's work should have great interest for Russia's neighbors, inasmuch as his conclusions seem to be sound and reasonable. After examining successively the frontiers of Russia on the side of Sweden, Germany, Austro-Hungary, Turkey, Persia, Afghanistan, China, etc., he concludes (I, p. 73) that the Russians "are for over 11,000 miles in touch with nine States, and nowhere wish any realignment of their frontier." It must be especially gratifying to the British to learn that he has always been opposed to the annexation by Russia of any part of Afghanistan, and that the interests of the Lion and the Bear in Asia are identical. His greatest anxiety is evidently on the side of Germany and Austria, for his main conclusion in 1900 was that "our Western frontier has never in the whole history of Russia been exposed to such danger in the event of a European war as it is now." This is an idea to which General Kuropatkin returns again and again.

Chapters iii and iv are mainly historical. They are somewhat desultory and are apparently designed to show that "our military position does not now compare so favorably as formerly with that of our neighbors, principally owing to our lack of railways, and our western frontiers are exposed to great danger through the perfect state of preparation of Germany and Austria . . . . Thus the chief duty

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of the war department in the first years of the present century is the defence of our frontiers. Of these, our Austrian and German borders, being the most dangerous, should receive our particular attention." (I, pp. 97 and 103.) He claims that Russia is essentially a land power and is in "no need of any further increase of territory."

In chapter v the author shows that in spite of the good work accomplished by the war department during the years 1898–1904 when he was war minister, Russia was not ready for war in 1904. There is also severe criticism of the management of Russian finances by M. de Witte.

Perhaps the most interesting chapter is the one (chapter vi) dealing with the causes of the war. It cannot be said that the author throws much new light upon this subject which is perhaps as fully and generally understood as any series of events in modern history. But he does bring into clear relief the fact that the war was the result of Russian aggression and greed. The first step was the intervention which forced Japan to accede the Liao-tung Peninsula to China in 1895. Then followed in rapid succession the construction of the Chinese-Eastern Railway through Manchuria, the lease of Port Arthur and Talien-wan (Dalny), and the occupation of Manchuria by Russian troops in consequence of the Boxer uprising.

"There can," in our author's opinion, "be no question of our sincere intention—at that time—(in 1900) to evacuate Manchuria . . . . But so long ago as 1900 it had seemed doubtful whether we should be able to carry out this promise" (I, p. 158). Nevertheless a treaty of evacuation covering the whole of Manchuria was concluded with China in April, 1902. (Even Kuropatkin had not been in favor of evacuating Northern Manchuria.)

The process of evacuation was actually begun in accordance with the terms of this treaty. That portion of Southern Manchuria west of the Liao River was readily abandoned, and even Mukden had been emptied of troops, "when suddenly everything was stopped by order of Admiral Alexieff." His reasons for taking such action have not, to this day, been sufficiently cleared up. It is definitely known, however, that the change in policy which stopped the withdrawal of troops from Southern Manchuria corresponded in time with the first visit to the Far East of State Councillor Bezobrazoff (II, p. 169).

It appears from certain documents appended by the editor to the second volume, that this promotor (it is eminently fitting that the arch villain of a modern up-to-date tragedy should be a promotor) had managed to interest a number of the members of the imperial family

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(including the czar himself) in certain timber concessions on the Yalu River in Korea. These schemes were in part opposed by the Russian ministers of finance, foreign affairs and war (de Witte, Landorff, and Kuropatkin), but Bezobrazoff found a ready instrument in Admiral Alexieff who, to the "complete surprise" of our author, was appointed viceroy of the Far East on August 15, 1903. It was the "firm" and unconciliatory attitude of Alexieff toward Japan during the negotiation which followed that resulted in war.

Although General Kuropatkin repeatedly speaks of the emperor's expressed wish that "our enterprises in the Far East should not lead to war," yet it is pretty clear to one who reads between the lines that he considers the emperor responsible, in a negative sense, at least, for the outbreak of the Russo-Japanese War. There can be little doubt but that this will be the verdict of history.

Among the general causes which contributed to Japan's success (see chapter vii), Kuropatkin emphasizes the patriotism, education, intelligence, organized efficiency, preparedness, but, above all, the high moral tone and qualities of the Japanese people. It is interesting to note that he cites as historical examples of inferior moral qualities the Federals of our Civil War and the British in South Africa as compared with the Confederates and the Boers.

Among the reasons for the reverses of the Russians (chapters vii x), he points to their inferiority to the Japanese in these and other respects. He especially dwells upon the loss of the Russian fleet; the delay in mobilization and difficulties of transportation due to the necessity of operating from a base 4000 miles away with which the army was connected by the sole means of a badly constructed and poorly equipped single-track railway; the insufficient training of the troops (mainly reservists) and the shortage of officers; the lack of patriotism and the unpopularity of the war in Russia; and the revolutionary propaganda which even infected the army in Manchuria.

Yet General Kuropatkin is firmly convinced that these difficulties had been largely overcome, and that victory was within Russia's grasp when the peace of Portsmouth was declared. This is perhaps the leading argument of the work—the main purpose for which it was written. It is a theme to which the author recurs again and again. The argument is summarized in chapter xii, entitled The Summary of the War.

One whole chapter (xi) is devoted to a consideration and recommendation of remedies and measures for the improvement and reorganization of the Russian army.

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On the whole, our impressions of the character and personality of the author left by this work are most pleasing. He strikes us as a man of great talent and distinction. Above all, he seems transparently honest, as becomes a certain type of Russian with whom many of us are acquainted. He warmly defends his conduct of the administration of the war department and of the war, but he admits his own shortcomings. He acknowledges that he was primarily responsible for the reverse at Mukden, and in his remarkable Farewell Address to the Officers of the First Manchurian Army (ii, 88–97), he frankly says:

"Before all others, I, your senior commander, am guilty because I did not succeed in rectifying our many moral and material defects during the war, and in making the most of the undoubted strong points of our troops."

He is also extremely generous to his honorable foe.

Yet this honest, generous-hearted, high-minded spirit apparently sees nothing in the conduct of the Russian revolutionists except unworthy ends. But that he is not a mere bureaucrat, that he does see the necessity for thorough and far-reaching reforms, is evident in several passages (see especially ii, pp. 92–93 of his Farewell Address).

The style is somewhat redundant. There is constant and wearisome repetition. There are some aphorisms, and an occasional gleam of humor, as when he says: "At Sebastopol we had only smooth-bore muskets, excellent for making a noise." In speaking of the Russian people at the time of the Crimean War, he remarks:

"Every one was, so to speak, dressed in a tunic buttoned right up to the chin, and looked as if he had swallowed a poker. The whole country, army included, could say nothing but "Very good;" "Quite so;" and "All correct."

A good example of one of his rare aphorisms is "Strength lies—in the truth."

The work is furnished with a good index, several valuable appendices, a fine map of the theatre of operations south of Mukden, and a number of illustrations.

AMOS S. HERSHEY.

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The Hague Peace Conferences of 1899 and 1907. By JAMES BROWN SCOTT. (Baltimore: Johns Hopkins' Press. 2 vols. Pp. xiv, 14, 887, vii, 548.)

The work of the first Hague conference was effectively presented to the American public in 1900 by one of the delegates from the United States, the late Frederick W. Holls, in a volume of some 600 pages. Professor Scott has now given us, at more than twice the length, the results of both conferences, together with some account of the general world-movement towards international agreements, and wider treaties of arbitration.

The first volume opens with a comparison, well thought out and clearly put, of the development of international law as compared with that of the English common law; each by a steady course of evolution, and each rising slowly out of the usages of the day. The general history of official international congresses, from the peace of Westphalia, is then briefly sketched, and due credit given (p. 27) to the pioneer work and discriminating forecast of our idealistic countryman, William Ladd. Their function is declared to be (p. 28) the formulation of international statutes.

Attention is called (pp. 47, 95) to the fact that the only powers not represented at her court, which were invited by Russia to the first Hague conference, were Brazil, Luxembourg, Montenegro and Siam.

Recent discussions in Great Britain and her colonies as to the increase of her navy lend a special interest to Professor Scott's treatment of the work of this conference in respect to the proposal to limit armaments. M. de Staal's remark before the first commission at an early meeting, that armed peace now costs more than the most burdensome war of former times, is quoted, and the Russian proposals on the subject are given at length (p. 55). The author is evidently disposed (p. 60) to regret the *consensus* of technical expert opinion that war could be shorn of but few of its horrors, while he accepts the conclusion that world-courts must precede world-peace. He gives an interesting extract from an article by Professor Zorn in the *Deutsche Revue* for November, 1906 (p. 75) which seems to indicate that Dr. Holls had less to do with obtaining Germany's final assent to the establishment of the Hague tribunal than has been generally supposed here.

The story of the second Hague conference, of which Professor Scott was a member, naturally occupies the greater part of his work. Emphasis is laid on the initiative of the United States in bringing the Latin-

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American powers into a position of adherence to the results of the first conference and active participation in the second. The author is inclined to think that the United States hardly received in the latter the public recognition of their share in its convocation which they merited (pp. 111, 115). One quite sufficient reason, however, for not assigning the presidency of any of the commissions to an American was that French, the language generally used in discussion and always in official documents in their final form, was not one which our principal delegates used with freedom (pp. 123, 167). They were therefore more useful on the floor than they could have been in a chair, the occupant of which, by European usage, must practically shape the course of proceeding and be vigilant to interpose on the first suggestion of an ill-advised or irrelevant proposition.

One of the most interesting chapters is that dealing with the *personnel* of the second conference (p. 155). The author's own impressions are frankly given (see, e. g., pp. 162, 169).

Before describing in detail the work of the two conferences in reference to the pacific settlement of international disputes, a chapter (chapter v) is interjected on the general subject of international arbitration, which is a good summary of the leading facts and principles.

Professor Scott justly regards the institution of the world prize court, leading to the London maritime law conference of 1908–9, as the most distinctive work accomplished at the Hague (p. 465), and defends the assent to it of our delegates, on the fundamental ground (p. 477) that a determination of a prize cause by a national judiciary can be final only in name, as respects the interests of the losing party, when a foreigner. It always remains open to him to appeal to his government, and this may involve the practical overruling of the adverse decision through international agreements,—a fate which has already befallen several of the prize judgments of the supreme court of the United States. The court itself may adhere to them as precedents, but the world has pronounced against them (p. 499). As to precisely how such a judgment as one for costs against an American, if rendered by this new world-court, could be executed, the author admits that there is a grave question (p. 502). A postscript, added as the work was passing through the press, gives the vote of the London conference on February 26, 1909, favoring the admission of reservations by powers ratifying this particular convention, as to giving an appeal to the new court the form of an action for indemnity, for loss suffered or otherwise to be suffered from the judgment which may be the subject of controversy (p. 511).

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In commenting on the results of the conferences, the distinction between conventions, signed declarations, unsigned declarations, resolutions and *voeux* is clearly stated (p. 136). The convention, or signed declaration, is a law proposed for ratification: the others are projects proposed for future consideration.

Occasional repetitions occur, which are the less to be wondered at since the work is an amplification of a course of lectures given at Johns Hopkins University, the primary purpose of which naturally was to impress the principal matters on the minds of the students. Thus, upon page 39 we have a long quotation from a dispatch of our minister at St. Petersburg, and on page 41 an important part of it appears again.

An appendix to vol. i and the whole of vol. ii, comprising in all about 600 pages, are devoted to documents throwing light on the preparation for each of the conferences, or stating their proceedings and conclusions.

Professor Scott has thus not only given the general public a clear view of the formation and the achievements of the two most imposing international congresses ever held, but put the student of public law who desires to examine them more closely, in possession of the most important sources of original information.

SIMEON E. BALDWIN.

The Two Hague Conferences. By WILLIAM I. HULL. (New York: Ginn and Company. 1908. Pp. 516.)

This work is written, the author states, to carry out the suggestion of the National Educational Association which at its forty-fifth session recommended to its members "that the work of the Hague conferences and of the peace associations be studied carefully and the results given proper consideration in the work of instruction." It is not to be expected that a book written to order will conform to the canons of historical criticism nor that the facts will be interpreted in critical spirit; and, in justice to the author, it should be stated at the outset that this is not the primary purpose of the work. The attempt is made to give a "historical record, and not to enter the field of partisan argument or theoretical contention." And, in general, he has given us a very good, well-ordered narrative of the work of the two conferences. The arrangement of the topics is such that a separate account of each conference may be secured, or a comparative study upon each topic discussed by the two conferences may be made. Thus for example,

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under the general topic of "Armaments" the discussions of 1899 are given under a sub-topic in 17 pages, while the discussions of 1907 upon the same subject are given in 6 pages immediately following. The same arrangement is followed throughout the work, enabling the reader to obtain not only a complete account of each subject discussed by each conference, but also to compare the work of the two conferences on any particular point. This arrangement also permits of the omission of any portion of the work without destroying the unity of the subject. In fact the arrangement is one of the most important and commendable features of the book; and when it is remembered that such conferences are productive of a mass of formal speeches and correspondence, in large part resulting to no purpose, such a sifting of results as the author has laid before us becomes a real contribution to the average reader; and much will be important to the student of international law.

In broad outline, the first 50 pages deal with the membership, organization, and program of the two conferences; 24 pages are devoted to armaments; 191, to warfare in the air, on the sea and on the land; 160, to arbitration, and the last 51 pages, to a summary of the results.

To the student of political institutions it will be of interest to note the influence of public opinion shaping the proceedings of the conventions; it forced the members to make public their daily transactions and influenced them in every move; they were in fact mere delegates restrained or impelled by the thousands of petitioners from the numerous peace associations, civic federations and churches of all civilized lands. In the summary of results the author has not always given the correct impression of actual achievements; the cause of peace is often over-stated and proper recognition is not always given to what had been accomplished in the way of codification prior to the two conferences; neither is there any recognition of the fact that in some instances the steps taken by the conferences were rather from, than towards, universal arbitration. In general, however, facts seem to be accurately stated though in a style not far above that employed by the average newspaper reporter; and, with the evident attempt to enliven the narrative, unimportant and trivial matters are often introduced. Sometimes too a careless statement appears which is not strictly accurate, such as the reference to Hugo Grotius as "the founder of International Law" (p. 18). This, of course, is a very minor point and will not mislead the scholar, but in a work intended for public instruction accuracy of expression is important.

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Since the proceedings of the two conferences were conducted in the French language, the copious extracts made for this book may not always retain the original force of the addresses, nor is this essential to the purpose of the work. In this connection mention may be made of a companion volume on the *Texts of the Peace Conferences at the Hague* (Ginn and Company), by J. B. Scott. This work contains in parallel columns the French and English texts of all the convention adopted, including correspondence and other important documents.

Professor Hull's sources of information for the first conference are the *Conference Internationale de la Paix*—the official record, and the *Actes et Documents relatifs au Programme de la Conference de la Paix de la Haye 1899*—a collection of materials upon which the work of this conference is based. Both of these collections are published by the Netherlands government. For the second conference the official record has not yet been published, though a daily account was printed in the *Currier de la Conférence* edited by Mr. Stead, a member of the conference. Holl's work on *The Peace Conference at the Hague* has also been used, but with this exception no reference is made to the general literature of the subject. A very good index adds to the usefulness of the work.

KARL F. GEISER.

Die Zweite Haager Friedenskonferenz. I. Teil. Das Prozessrecht. Im Anhang: Die Haager Schlussakte mit den sämtlichen Konventionen. Von OTFRIED NIPPOLD. (Leipzig: Duncker und Humblot, 1908. Pp. 231, lxxxxii.)

This work, originally published in Niemeyer's *Zeitschrift für Internationales Privat- und Öffentliches Recht*, is now issued in separate form with important additions. The appendix containing the final act and conventions adopted by the conference is separately paged in order that it may take its proper place at the end of the book when the second part has been issued. The second part is to deal with the laws of war. The first part deals only with peaceful methods of settling international disputes.

The author has endeavored to avoid all observations and conclusions which are not based on the work of the conference itself, and therefore has used only official documents of the conference, and authentic reports of the speeches and deliberations of the delegates. The introduction

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is a preliminary survey in which are explained the personnel of the conference, its organization and division into committees and sub-committees, the general conclusions reached, the methods of ratification, and the arrangements for a third conference. The first three chapters relate to procedure in international disputes, treating the subject under the general headings: obligatory arbitration, the permanent court of arbitration, and arbitration procedure. The fourth and fifth chapters discuss the Drago doctrine and the international prize court. The method of presentation is excellent. Each proposition is followed from its introduction into the conference to its adoption or rejection, the arguments for and against being given, with abstracts of most of the speeches, and copious extracts of the more notable efforts. The speeches of the first German delegate are quoted more at length than those of the delegates of other nations. The larger part of the book is reportorial in character, and contains comparatively few observations of the author. This is consistent with his plan to describe the actual work and result of the conference.

The sixth and last chapter is a critical review of the results and methods of the conference presented in the previous chapters. To the American this chapter will be of special interest because it discusses points on which the German and American delegates disagreed. In it are briefly reiterated the general principles laid down in Nippold's previous work, entitled *Die Fortbildung des Verfahrens in völkerrechtlichen Streitigkeiten*. He cons ders article 16 of the final act of the conference of 1899 to be the real starting point of all advance in arbitration. This article reads, "In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle." The difficulty of determining whether a question is of a legal or of a political nature is discussed. He believes that it was a mistake in the second conference to attempt to settle upon a list of subjects amenable to obligatory arbitration. It would have been better, he contends, to hold to the statement in article 16, above quoted, allowing each state to exempt from arbitration questions involving national honor or vital interests. The attitude of the German delegation on obligatory arbitration is criticised; and the tendency to consider all other nations as potential enemies is declared to be contrary to the genius of international progress.

"Wenn es ein Grundzug des Völkerrechts der vergangenen Tage

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war, dass die Staaten, auf ihre Souveränität pochend, Rechte für sich in Anspruch nahmen, so geht der Grundzug des modernen Völkerrechts dahin, dass die Staaten, in Erkenntnis der Solidarität ihren Interessen, Pflichten anerkennen, Pflichten gegenüber den anderen Staaten, Pflichten gegenüber der Völkerrechtsgemeinschaft."

FREDERICK C. HICKS.

Völkerrecht. By DR. E. VON ULLMANN. (Tübingen: J. C. B. Mohr. 1908, viii, p. 555.)

The work before us is a thoroughly rewritten and expanded edition of the author's treatise which was published in 1898. It has been brought down so as to include the results of the second Hague conference and the results for international law of the recent wars. The important literature of international law, almost in its entirety, has been made use of by the author and his book represents a complete though concise statement of the present state of international law.

The author bases international law, not on sovereignty, but on the fact of international community. As the solidarity of interests which civilized states have in common becomes more clearly expressed, international law grows in extent and definiteness and in actual compulsion. The question as to whether a positive international law exists, he solves not on the basis of any narrow uristic criteria, but by developing the idea that the community interest which has grown up among civilized nations cannot exist without norms which are, as a matter of fact, lived up to. That a definite judicature and execution does not as yet exist with respect to international law does not change its character, as many parts of constitutional law which are admittedly juristic also lack enforcement by tribunals. The author makes the point that the state of the highest development of national law should not be taken as the sole criterion as to what constitutes law and legality.

But while the author thus occupies an advanced position in building his system upon the necessary community between nations and the interests which bind them together, he is thoroughly positive in his method. The natural law construction of earlier writers he has entirely abandoned, and while his treatment discusses in every case the rational implications of a doctrine, in his statement of conclusions as to existing law, his work rests upon a basis as positive as that of such writers as Hall. While his general point of view is, of course, the Continental one,

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he is by no means one-sided or national in the principles he announces. Aside from the general excellence of this work, there are many other notable features. Attention is centered upon the normal relations between states, to the activities of diplomatic agents, congresses and conferences, the conclusion and enforcement of treaties, and especially the administration of the solidary interests of a cultural and economic nature of all the civilized powers. From the reading of a book like this, one rises with an entirely different and indeed much higher conception of international law from that conveyed by so many of the standard treatises which in the part relating to peace deal only with formal matters, such as the nature of the state, state succession, sovereignty, etc. The book before us is rich in its material upon international activities in time of peace, and bears in upon us strongly the impression of the constant relations and normal activities through which nations from day to day, year out, year in, act as members of a great, stable and permanent society. The work is divided into eight books, seven of which deal with the relations of peace, and only one, occupying about one-fifth of the volume, with international conflicts. The law of war, itself, which in the older treatises constituted the main body of doctrine, has shrunk into the modest dimensions of 80 pages out of 546. What a great Spanish writer prophesied has here already come to pass, in that the law of war has been reduced almost to the relative position with regard to the whole of international law as that which is held by criminal law in the legal system of a nation.

The positive method of the author does not preclude a very clear perception of the fact that international law is undergoing a process of evolution. The manner in which the author has been able to indicate this growth and development in contemporary international law is one of the chief merits and charms of his work. As a statement from the highest point of view of science, of the present state of international law, the work of Professor von Ullmann is of the greatest value; but it is also a most useful handbook both for study and for reference, in which respect it may be compared to the excellent manual by Henry Bonfils.

PAUL S. REINSCH.

La vie politique dans les deux mondes. Edited by M. ACHILLE VIALLETE. Second volume. (Paris: Alcan. 1909. Pp. 628.)

The prompt appearance of the second volume of *La vie politiques dans les deux mondes*, edited by M. Achille Viallete, will be welcomed

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by all who desire a succinct, accurate and intelligent summary of the more important political events throughout the world during the twelve months from October, 1907, to September 30, 1908. Each of the leading powers are considered seriatim, the less important countries being treated in groups. The chapter upon the United States is taken by the editor. M. Andre Tardieu furnished a short introductory summary of the international events in general. M. Gidel provides a convenient digest, topically arranged, of the international treaties and conventions entered into during the period covered; in a short concluding chapter there is given a general survey of the year from the economic viewpoint.

In these days, when important events succeed one another so rapidly, such an excellent annual publication as this is of great utility. It is suggested, however, that its value may be considerably enhanced by giving in footnotes, whenever possible, fuller references to the official documents and other original sources of information.

Le Consul. Fonctions, Immunités, Organization, Exequatur. Essai d'exposé systématique. By ELLERY C. STOWELL. (Paris: A. Pedone, 1909. Pp. 353.)

At a period when the commercial powers of the world are engaged in a feverish competition for the extension of their foreign commerce, a general survey of the consular arm of government, its organization, functions and immunities is timely. It is only in comparatively recent times that there has been a realization of the fact that, in many particulars, the organization of the consular service has retained obsolete features without a compensating intensive development so as to be adequate to the needs of commerce. Finally, however, the legislative and administrative organs of many governments have been stimulated to activity in this respect by demands coming from within the mercantile community itself. Public opinion, thus effectively generated, usually results in action and to it, rather than to the growth of the system from within, may be ascribed the parliamentary action taken in Great Britain in 1903 and the re-organization of the American consular service through congressional action in 1906.

The work before us is a dissertation for the doctor's degree presented to the University of Paris by an American student. It does not assume to be a treatise upon the functions or immunities of consuls according to

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the public law of any one nation or group of nations, nor does it attempt to discuss systematically, the powers and privileges of the consular class accorded by the rules of international law or by treaty. The author, however, has attempted to sketch in broad outline the principles underlying the establishment of consular relations between nations, the classification of consuls as functionaries of the state, the classification of the various functions necessarily or properly exercised by them, their relation to the law and administrative systems of their own state and the rights, privileges and immunities accorded, or which should be accorded to them by mandates pursuant to the laws or customs of the state of jurisdiction.

The first part of the work deals with functions (pp. 15–135). Here the author insists that the truly scientific classification should be, firstly, according to the nationality of the person for whom the act is performed (*ratione personæ*) and, secondly, according to relation of the consul's own state to the act to be performed, in which case the competency is derived by reason of the nature of the act itself (*ratione materiæ*). Of course no system of legislation nor of administrative instruction of which we are aware follows the classification thus suggested, nor is the need for such a classification at first apparent, though earnestly insisted upon by the author. But it lends itself very well to a systematic exposition of the subject and has a further importance in the argument in that it is insisted that consular immunity and privilege be precisely commensurate with the necessities of the case in respect of the performance of the particular function (p. 41).

It is in this portion of the book that we notice some minor inaccuracies. Thus it is said (p. 40) in respect of wills executed in foreign countries that (translated) "Without doubt the testament executed according to the forms of the foreign country will produce all its effects in the country of origin,"—the testator, however, may not be familiar with these forms, etc. The law as stated is that of some continental systems but is not the rule under the common law and is true only to a limited degree, even as tempered by modern legislation. However, the reasoning of the passage is not affected, for the author argues for an extension of the functions of consuls in their powers to attest the wills of their nationals, and the correct statement would therefore have been even a stronger argument.

The second part of the book (pp. 137–184) deals with immunities and privileges of consuls. It would seem that the rules of international law upon this subject are extremely vague, a fact which has been com-

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mented upon in official reports relative to British consular establishments. (Appendix C, p. 251.) The author pleads for a greater precision and applies the test already mentioned to the various classes of immunities and privileges to which claims have been made. Less difficulty seems to be encountered in respect of essential immunities than in finding the proper official and social level of consular persons. Not being a part of the diplomatic establishment, consuls are not recognized at court and, in the social community, rank after the most youthful secretary of an embassy or legation. This element, apparently so trivial, has given rise to much ill-feeling. Obviously it may be a positive detriment to the service in that it tends to discourage the best talent from entering it and deprives the more experienced of that *armor propre* which frequently constitutes the most potent, if not the only incentive to effectual work. Germany, characteristic in perspicacity in anything which affects her commercial welfare, has recognized in this an element of importance, in that the head of the consular service within any jurisdiction ranks next after the chief of the diplomatic mission (p. 183).

The third portion of the book (pp. 186–207) is addressed to general problems of organization. The author essays to point out the way of progress and notes some inconsistencies still prevalent in many systems. Besides the lack of official distinction already mentioned, other weak elements to which attention is invited are the failure to provide for apprenticeships in the service, the absence of commercial as distinguished from academic training, insufficient pay, absence of permanency of service or of a pension system commensurate with the period of service and needless restrictions upon dealing directly with central organs of the jurisdictional state as well as with coördinate administrative departments of the state of mandate.

The appendices consist of extracts from the legislative reports of the United States congress and the British parliament which are used as illustrative data throughout the body of the book, and a *règlement* proposed in 1896 by the Institute of International Law upon the immunities of consuls. A bibliography is also appended.

Barring some unwise features of arrangement, as for instance, in postponing definition of the consular office to the very last page of the text (the very first would have been appropriate) the material has been well worked up. The style has that clarity to which the French language is so well adapted. At a period when, notwithstanding the titanic efforts of the advocates of peace, so much time and technical

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study are devoted to the "protection" of commerce by means of the military and naval arms of government, not to mention the huge expenditure of material resources as the sinews of these arms, a scientific investigation of that arm of government which deals directly with the promotion of commerce should be welcomed with commendation. A well-regulated consular system is in itself one of the guarantees of the maintenance of peaceful commercial relations between states and a book like the present, containing many thoughtful suggestions for the accomplishment of that purpose is to be judged in a spirit of appreciation and tolerant criticism.

ARTHUR K. KUHN.

The Struggle for Imperial Unity. BY COLONEL GEORGE T. DENISON. (London: Macmillan Company. 1909. Pp. 422).

The author of this book, Colonel George Denison of Toronto, has been identified throughout the whole of his active career with the various phases of the imperial movement in Canada. As a protagonist in the general election contest of 1891 in which reciprocity with the United States, with the possibilities of political annexation in the background, formed the paramount issue; as a leader in the abortive movement of twenty years ago in favor of parliamentary federation of the empire; and in recent times in connection with the sending of the expeditionary force to South Africa and as an ardent sympathizer with tariff reform in Great Britian and preferential trade in the empire, Colonel Denison has made his name known throughout the length of the king's dominions. The present work, which consists practically of personal memoirs, will be read with profit by all students of British imperial development. The parts of the book dealing with the issues of the early nineties and the annexation movement in Canada (chapter x to xvi) will be of particular interest to American readers. The author's point of view is somewhat uncompromising and his attachment to British institutions, as he himself frankly admits, is of the aggressive and militant character natural to a soldier. Many of his readers will perhaps deplore his denunciations of Prof. Goldwin Smith, once his personal friend, as a "traitor." But all will readily admit the single-heartedness of Colonel Denison's devotion to the cause he serves. The most sensational part of the book is found in the disclosure of certain correspondence of the Honorable Honoré Mercier, ex-premier of

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Quebec, under date of August, 1893, which points towards the existence of an intrigue as between Mercier and other Canadians on the one hand and certain prominent Eastern Americans on the other in favor of a declaration of Canadian independence as a prelude, perhaps, to continental union. Colonel Denison's chapters on the Red River expedition (chapters iii and iv) and on the career of the Imperial Federal League in Canada are of use to students of contemporary history as containing material not readily accessible elsewhere. It is noticeable that the book has been very quietly received in Canada and seems to have excited less antagonism in certain quarters than might have been expected. It may be that in the rapid movement of current events many of the issues on which Colonel Denison dwells in controversial fashion are already drifting into the history of the past. The author's style, as in his *Soldiering in Canada* and other works, is lucid, direct and entirely free from literary affectation or pose.

S. L.

Colonization: A Study of the Founding of New Societies. By ALBERT GALLOWAY KELLER, Professor of the Science of Society in Yale University. (Boston: Ginn and Company. 1908. Pp xii, 630, Maps.)

The author in this somewhat bulky volume essays to provide a textbook for the study of colonization. The treatise opens with a preliminary chapter on definition and classification, followed by a description of some colonial efforts of the simpler type, including a brief survey of the colonization of the Chinese, the peoples of antiquity and the medieval Italian states. The greater part of the volume is devoted to an account of Portugese and Spanish activities; considerable space is also given to the labors of the Dutch as effected through their companies. The work closes with chapters on the establishments of the Scandinavians, the Italian and the Germans. The lack of any reference to English and French colonization at once arrests attention, but the author in his introduction has attempted to anticipate criticism by stating that he has passed over these topics because of the necessary lengthening of his task and his unreadiness for it. It is exceedingly doubtful if any such reason be sufficient for the omission from such a work of all mention of the colonial activities of the two nations most successful in this field. Without further investigation the student unfamiliar with the subject

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would gain from the present volume only such impressions as the misfortunes of the more inapt and less fortunate nations naturally convey. The sole chance of seeing the brighter side of colonial effort is in the discussion of the Dutch establishments, and there again the reader perceives for the greater part the reign of corporate monopoly and the sufferings of the native races under such a régime. The lessons to be learned from a knowledge of the better development of the English system as illustrated in the self-governing establishments and the crown colonies are entirely missing. In this sense the volume does not satisfy, as it affords only a one-sided, somewhat distorted, view of the many problems connected with colonization. Of course, were it written for a scholar conversant with the subject this criticism would not hold.

The distribution of the material into chapters is in several instances not well made; the chapter devoted to colonization of the simpler type might well have been divided; that portion of the ninth chapter relating to Cuba, Puerto Rico and the Philippines should also constitute a separate chapter. Again in the fourteenth chapter Italian and German undertakings are thrown together, which arrangement is not complimentary to either people.

In his discussion of colonization of the simpler type, the author emphasizes the difference between the characteristic features of ancient and modern colonization, and points out that few colonists before the age of the Portugese settled outside of their native climatic zone; that, therefore, the establishments of ancient and medieval times were not obliged to overcome the difficulties due to change of climatic conditions, and consequently the matter of sanitation and hygiene did not seriously affect their life; none of the problems connected with tropical colonization of the modern era were present. The brief reference to Chinese colonization is interesting and the account of the Scandinavian colonies is wholesome. The description of the efforts of the Germans is useful, if not complimentary. The story of the Portugese, Spanish and Dutch colonial empires, to which the most space is devoted is well known; it seems carefully worked out, but in view of the previous labors of others in these fields it naturally cannot contain anything very novel.

The volume closes rather abruptly; it seems to lack a final chapter surveying the field it covers and summarizing the conclusions of the author. The references in the footnotes afford opportunity to study the points involved at greater length; the bibliography, as stated, is based more on treatises than on sources; but, even so, some well-known titles are omitted. The maps are certainly a great advantage and facilitate the understanding of the text.

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In its entirety the volume is a good introduction to the subject, but the reader cannot form from it a fair judgment on the advisability of colonial effort until he shall have also read something of the methods of colonial administration employed by the English and the French. The author might well meet this objection by supplementing his present work with another volume treating of the undertakings of these peoples, but he would then practically be duplicating that which already exists.

HENRY C. MORRIS.

The Government of European Cities. By WILLIAM BENNETT MUNRO. (New York: The Macmillan Company. 1909 Pp. ix, 409.)

Professor Munro has written a clear and accurate account of the structure and operation of municipal government in France, Prussia and England. His work is not only a description of the municipal organization, but also a study of the practical operation of government. The book is primarily a study in administration, and does not profess to consider fully the subject of municipal functions; it is a study of the broad features of municipal organization and administration, with useful and interesting comparisons of conditions in the three countries studied, and of these countries with the United States. Emphasis has been placed upon the relations of municipal authorities with the central government and the discussion of this subject is especially satisfactory. The author purposely leaves aside any discussion of the extent to which foreign cities have assumed the ownership or operation of public utilities, and he discusses only incidentally the municipal financial systems. He treats primarily the structure of government and the general methods of conducting administrative work, and in this field he has written a scholarly and useful work.

Professor Munro's book fills a distinct space in the literature of municipal government, for little was before available in English of the material which he has presented. Mr. Albert Shaw's works attempted little in the way of discussing the general administrative organization. The author's discussions are fuller and more satisfactory than those in Ashley's *Local and Central Government,* and his accounts of English and French city governments are more satisfactory than those in the *Schriften des Vereins für Social-politik* (vol. 123).

Especial attention should be called to the author's full citation of

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authorities. Many subjects are not discussed as fully as would have been desired, and some important matters are merely mentioned, but in every case there are full references to works from which further information may be obtained. A separate chapter of the book under review is devoted to an extensive critical bibliography of municipal government in the three countries under discussion. One misses from this bibliography Maurice Block's *Dictionnaire de l'administration francaise* (5th ed., 2 vols., Paris, 1905), and G. H. Blunden's *Local Taxation and Finance* (London, 1895).

On the whole, Professor Munro's work is so well done that there is little room for criticism. In the account of Prussian municipal government it would be of interest to have a discussion of the "Gemeinde," and in the account of English city government a fuller treatment of "urban districts" would have been of value. At times the discussion is not elementary enough for the reader who does not already possess some little knowledge of municipal government.

W. F. Dodd.

The Government of American Cities. By Horace E. Deming. (New York: G. P. Putnam's Sons. 1909. Pp. ix, 323.)

Mr. Horace E. Deming is well known to students of municipal government as an active worker in this field, and as the chairman of the committee which drafted the *Municipal Program* adopted by the National Municipal League in 1899. Since its publication the *Municipal Program* has been to a large extent the program advocated by those interested in municipal progress, and it has had an important influence upon municipal development. What Mr. Deming has now done is, in reality, to sum up the advances made within the past ten years, to state clearly the arguments in favor of the plans proposed by the *Municipal Program*, and to reprint the program (which has been out of print for some time), together with a clear analysis of its provisions. His work cannot therefore be said to contain much that is new to students of municipal affairs, but it should perform an important service in educating the public with reference to proposed reforms in this field.

The fundamental point in Mr. Deming's argument, that for granting to cities home rule with reference to their local affairs, is clearly and forcibly put, but it would seem that the author minimizes the diffi-

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culty of distinguishing between municipal and state functions. With reference to the city's position as a state agency, little emphasis is put upon the need for efficient state supervision of local activities—the problem here is one of state government as well as of municipal government, and the broad application of the principle of home rule may prove somewhat injurious unless there is at the same time devised proper state machinery to supervise cities in their performance of state functions. Practically the whole discussion of the relations between city and state, both in Mr. Deming's work and elsewhere, looks at the problem too much from the standpoint of the city alone, and does not, it would seem, sufficiently emphasize the fact that proper municipal administration, while in large part a distinct problem, is also to a great extent but a portion of the larger problem of securing adequate state administration. Yet this criticism of Mr. Deming's work is to a certain extent unfair, for the author does not overlook the need for state supervision, but inasmuch as he is dealing with the specific problem of municipal government, he necessarily places his emphasis upon this subject and not upon that of devising adequate state machinery for the supervision of cities in their performance of state functions.

W. L. D.

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INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS

ADMINISTRATIVE LAW

Books

Anschütz, Gustav. Die Organizationsgesetze der inneren Verwaltung in Preussen. 2d. ed. Berlin: Heymann. Pp. 692.

Bornhak, Conrad. Grundriss der Verwaltungsrechts in Preussen und dem Deutschen Reiche. 2 Aufl. Leipzig: Deichert. Pp. vi, 208.

Luca, Fr. de. Compendio delle lezioni di diritto amministrativo. Napoli. 1908. Pp. 304.

Mandrette, G. Les instructions des supérieurs heirarchiques en droit administratif. Paris: Giard et Brière. 1908. Pp. 179.

Robertson, W. and *Porter, Charles.* Sanitary law and practice. London: Sanitary Publishing Company. Pp. 714.

Spiegel, Ludwig. Die Verwaltungsrechtswissenschaft. Beiträge zur Systematik und Methodik der Rechtswissenschaften. Leipzig: Duncker and Humblot. Pp. xiii, 222.

Sass., Carl. Preussisches Baupolizeirecht. Berlin: Guttentag. Pp. viii, 396.

Articles in Periodicals

Administrative law. Ueber die Bedeutung der verwaltungslehre als selbstandiger Wissenschaft. *F Schmidt.* Zeitschrift für die gesamte Staatswissenschaft. No. 2. 1909.

COLONIES

Books

Colvin, Sir Aükland. The making of modern Egypt. 4th ed. London: Nelson. Pp. 384.

Denison, George T. The struggle for imperial unity: Recollections and experiences. London: Macmillan. Pp. 434.

François, G. et *Rouget, F.* Manuel de législation coloniale. Paris: Larose.

Gaul, Johs. Finanzrecht der deutschen Schutzgebiete. Leipzig: C. Milde. Pp. 172.

Hubert, Lucien. L'Oeuvre de la France en Afrique occidentale. Paris: F. Alcan. 1908. Pp. 250.

Julien, Gustave. Institutions politiques et sociales de Madagascar. Paris: Guilmoto. Pp. xii, 644.

Rouard de Card, E. La représentation des indigènes musulmans dans les conseils de l'Algérie. Paris: Pedone.

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ELECTRONIC REPRODUCTION PROHIBITED

Sassen, Franz Jos. Das Gesetzgebungs- und Verordnungsrecht in den deutschen Kolonien. Tubingen: J. C. B. Mohr.

Silburn, P. A. The colonies and imperial defence. London: Longmans. Pp. 368.

Articles in Periodicals

Africa. L'Afrique Occidentale Francaise en 1908. *G. Francois.* Ques. Dip. et Col. April 1.

Algeria. De l'enseignement des indigenes en Algerie. *J. Corrieras.* Ques. Dip. et Col. May 1.

Colonial Conference. La Conférence coloniale de Londres (1907). *P. Rain.* An. de Sci. Pol. March 15.

CONSTITUTIONAL LAW

Books

Barrault, Henry-Émile. Le droit d'association en Angleterre. Paris: Larose et Tenin. 1908. Pp. 309.

Bonnet, E. De la promulgation. (Étude de droit public.) Paris: Pp. 152.

Bossard, Damian K. Das Verhältniss zwischen Bundesversammlung und Bundesrat. Zürich: Leemann. Pp. xii, 182.

Burgess, John W. The German emperor and the German government. New York: Columbia University Press. Pp. 22.

Carenzi, Giac. Lo statuto fondamentale del Regno, annotato. Torino: Sartori. 1908. Pp. 80.

Errera, Paul. Das Staatsrecht des Königreichs Belgien. Tübingen: J. C. B. Mohr. (Das öffentliche Recht der Gegenwart.)

Esmein, A. Eléments de droit constitutionnel français et comparé. 5th ed. Paris: Larose et Tenin. Pp. xiv, 542.

Fabre, J. Des actes de gouvernement. Montpellier: Firmin, 1908. Pp. 134.

Faye, E. Manuel de droit électoral d'après la jurisprudence de la Cour de Cassation. 2d ed. Paris: Pichon.

Ferdinandy, G. v. Das öffentliche Recht in Ungarn nebst Autonomie Kroatien-Slavonien. Hanover: Jaenecke.

Flandin, E. Institutions politiques de l'Europe contemporaine. Tome IV. Pay-Bas, Luxembourg, Danemark, Suède, Norwège. Paris: Soudier. Pp. 510.

Hostos, E. M. de. Lecciones de derecho constitucional. Nueva edicion. Madrid.

Hubrich, Eduard. Das öffentliche Recht in Preussen. Hannover: Jaenecke. Pp. viii, 248.

Jellinek, Georg. Ein Gesetzentwurf betreffend die Verantwortlichkeit des Reichskanzlers und seiner Stellvertreter nebst Begründung. Heidelberg: C. Winter. Pp. 15.

Jellinek, Walter. Der fehlerhafte Staatsakt und seine Wirkungen. Tubingen: J. C. B. Mohr. Pp. 201.

Knetsch, W. Alfons. Das Staats- und Verwaltungsrecht von Sachsen-Weimar-Eisenach. Hanover: Jänecke. Pp. x, 210.

Le Roux, P. Essai sur la notion de la responsabilité de l'état considéré comme puissance publique. Paris: Pichon. Pp. 124.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Lucas, M. Manuel de droit public et administratif et de législation financière. Paris.

Mathews, John Mabry. Legislative and judicial history of the fifteenth amendment. Baltimore: Johns Hopkins Press. Pp. 20, 126.

Maurer, K. v. Das Staatsrecht des isländischen Freistaates. Leipzig: Deichert.

Mayer, Ernst. Italienische Verfassungsgeschichte von den Gothenzeit bis zur Zunftherrschaft. Leipzig: Deichert. 2 vols.

Orban, O. Le droit constitutionnel de la Belgique. Tome II: Les pouvoirs de l'état. Liège. 1908. Pp. 744.

Porritt, Edward. The unreformed house of commons. Parliamentary representation before 1832. 2d. ed. Cambridge University Press. 2 vols.

Racioppi, F. e *Brunelli, I.* Commento allo statuto del Regno. Torino: Unione typografico-editrice. 3 vols.

Ripert, Henry. Le présidence des assemblées politiques. Paris: Rousseau. 1908. Pp. 511.

Sanftenberg und *Knorr.* Das Staats- und Verwaltungsrecht des Herzogtums Anhalt. Hannover: Jänecke. Pp. xv, 373.

Sibert, M. Étude sur le premier minister en Angleterre depuis ses origines jusqu' á l'époque contemporaine. Paris: Rousseau. Pp. xv, 353.

Wenzel, M. Zur Lehre der Vertragsmässigen Elemente der Reichverfassung. Breslau. Pp. viii, 176. (Abhandlungen aus dem Staats-, Verwaltungs- und Völkerrecht.)

Wicks, Frederick. Britische Verfassung und Verwaltung. Aus dem Englischen von R. G. Binding. Leipzig: Hirschfeld. Pp. iii, 175.

Zweig, Egon. Die Lehre vom pouvoir constituant. Ein Beitrag zum Staatsrecht der französ. Revolution. Tübingen: J. C. B. Mohr. Pp. xv, 482.

Articles in Periodicals

Amendment. The Method of Amending the Federal Constitution. *W. P. Potter.* Pa. L. Rev. and Am. L. Reg. June.

Anti-trust legislation. Federal Anti-Trust Legislation and President Taft's Proposed Amendments. *L. Evans.* Ill. L. Rev. May.

Contract. Liberty of Contract. *R. Pound.* Yale L. Jr. May.

Federal Common Law. Federal Common Law and Interstate Carriers. *E. P. Prentice.* Col. L. Rev. May.

Federal officers. The Jurisdiction of State and Federal Courts over Federal Officers. *J. L. Bishop.* Col. L. Rev. May.

House of Lords. The House of Lords: Its History and Constitution—IV. *C. R. A. Howden.* Jurid. Rev. April.

Judicial power. Growth of Judicial Power. *W. F. Dodd.* Pol. Sci. Quar. June.

Oklahoma. The Constitution of Oklahoma. *C. A. Beard.* Pol. Sci. Quar. March.

Pardons. Injunctions and Pardons. *R. W. Hale.* Am. L. Rev. March–April.

Speakership. Speaker of the House of Representatives. *A. C. Hinds.* Am. Pol. Sci. Rev. May.

Supreme Court. Will the Supreme Court Become the Supreme Legislature of the United States? *C. Thorne.* Am. L. Rev. March–April.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Switzerland. The Intercantonal Law of Switzerland. (Swiss Interstate Law). *M. Huber.* Am. Jr. of Int. Law. January.

Wilson Act. The Wilson Act and the Constitution. *A. A. Bruce.* Green Bag. May.

INTERNATIONAL LAW AND DIPLOMACY

Books

Allué Salvador, M. Los sitios de Zaragoza, ante el derecho internacional. Zaragoza. 1908. Pp. 130.

Arduino, M. Consoli, consolati e diritto consolare. Milano: Hoepli. 1908. Pp. xv, 277.

Bellat, Gaston. La déclaration de guerre en droit international. Paris: E. Larose. Pp. 144.

Blociszewski, J. La condition internationale de l'Autriche-Hongrie et le compromis douanier et commercial de 1907. Paris: Pedone.

Caleb. A. La Bulgarie et le traité de Berlin. Geneve. Pp. 48.

Chastel, Adolphe du. Les événements d'Orient et le Congrès de Berlin de 1878. Paris: Casterman. Pp. 64.

Couder, A. De las condition des chemins de fer en temps de guerre. Nancy, 1908. Pp. v, 174.

Cvijic, I. L'Annexion de la Bosnie et la question serbe. Paris: Hachette. Pp. x, 71.

Dupuis, Charles. Le principe d'equilibre et le concert européen, de la paix de Westphalie à l'acte d'Algésiras. Paris: Perrin.

Focherini, Attilio. Il postliminio nel moderno diritto internazionale. Modena: G. Ferraguti. 1908. Pp. xii, 118.

Georgewitsch Wladan. Die serbische Frage. Stuttgart: Deutsche Verlags-Anstalt, Pp. 148.

Ghica, A. L'Albanie et la question d'Orient. Paris: G. Dujarric. Pp. 304.

Hamilton, Angus. Problems of the Middle East. London: Nash. Pp. 500.

Jacomet, La guerre et les traités. Paris: Charles Lavauzelle. Pp. 188.

Labra, R. M. de. El instituto de derecho internacional. Madrid: Alonzo, 1907. Pp. 574.

Lehr, Ernest. La nationalité dans les principaux pays du globe. Paris: Pedone. Pp. xvi, 227.

Marfil Garcia, M. Relaciones entra España y la Gran Bretaña desde las paces de Utrecht hasta nuestros dias. Madrid.

Millard, Thomas F. America and the Far Eastern question. New York: Moffat. Pp. 24, 576.

Niemeyer, M. Prinzipien des Seekriegsrechts. Berlin: Mittler. Pp. 31.

Passy, Frédéric. Pour la paix; notes et documents. Paris: E. Fasquelle. Pp. viii, 330.

Peyreigne, Ch. Les influences européennes au Maroc avant la conférence d'Algésiras. Toulouse: Dirion. 1908. Pp. 185.

Pilidi, Jean. Le combustible en temps de guerre. Le houille, le pétrole dans le droit de la neutralité maritime. Paris: Pedone.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Renault, Louis. Les deux conférences de la paix, 1899 et 1907. Recueil des textes arrêtés par ces conférences et de differents documents complementaires. 2d ed. Paris: A. Rousseau. Pp. viii. 227.

Richet, Charles. Die Vergangenheit des Krieges und die Zukunft des Friedens. Wien. 1909. Pp. 350.

Robin, R. Le droit d'asile diplomatique. Sa suppression en Haiti. Paris: Pedone.

Scheltus, G. A. Voorziening in de behoefte der belligerenten dan steenkolen. Utrecht: Den Boer. Pp. 320.

Sammlung älterer Seerechtsquellen. hrsg v. *H. L. Zeller.* 3 Heft. 2 Abtlg. Das Seerech von Oléron. Mainz: J. Diemer. 1906–08. Pp. vi, 24.

Scelle, Georges. La situation diplomatique de la Bulgarie avant la proclamation de son indépendance le 5 Oct. 1908. Paris: Pedone.

Schneeli, G. Radiotelegraphie und Voelkerrecht. Berlin: Vahlen. 1908. Pp. 96.

Scott, James Brown. The Hague peace conferences of 1899 and 1907. Baltimore: Johns Hopkins Press. 2 vols.

Stowell, Ellery C. Le Consul. Fonctions, immunités, organisation, exequatur. Paris: A. Pedone. Pp. 358.

Tardieu, André. La France et les Alliances. La lutte pour l'équilibre. Paris: F. Alcan. Pp. iii, 369.

Weale, B. L. Putnam. The coming struggle in eastern Asia. 2d ed. New York: Macmillan. Pp. 22, 640.

Articles in Periodicals

Aliens. Aliens Under the Federal Laws of the United States: III. Federal Legislation, Public Lands, Real Estate in the Territories. *S. McClintock.* Ill. L. Rev. May.

Aliens. Aliens Under The Federal Laws of the United States: IV. Rights of Resident Aliens. *S. McClintock.* Ill. L. Rev. June.

Bosnia. L'annexion de la Bosnie-Herzégovine et Le Droit International. *M. R. Vesnitch.* Rev. de Droit Int. et Leg. Comp. 1909. No. 2.

Capital. L'internationalisation des capitaux et quelquesunes de ses consequences. *M. Moyne.* Rev. Gen. de Droit Int. Pub. January–February.

Congo Free State. The Origin of the Congo Free State, Considered from the Standpoint of International Law. *J. S. Reeves.* Am. Jr. of Int. Law. January.

International Administrative Law. International Administrative Law and National Sovereignty. *P. S. Reinsch.* Am. Jr. of Int. Law. January.

International law and national law. L'individu devant l'autorité judiciaire et le droit international. G. *Diena.* Rev. Gen. de Droit Int. Pub. January–February.

International Law. Notes on International Law. *E. Maxey.* Am. L. Rev. March–April.

Japan. La politique etrangère du Japon contemporain. *M. Revon.* Ques. Dip. et Col. April 1.

Latin-America. Latin-America and International Law. *A. Alvarez.* Am. Jr. of Int. Law. April.

Most-Favored-Nation clause. The Most-Favored-Nation Clause. *S. K. Hornbeck.* (part I.) Am. Jr. of Int. Law. April.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Oriental Crisis. L'heure décisive de la Crise orientale. *J. Dprpbantz.* Ques. Dip. et Col. March 16.

Panama Canal. Neutralization of the Panama Canal. *P. C. Hains.* Am. Jr. of Int. Law. April.

Piracy. The Lake Erie Piracy Case. *H. B. Brown.* Green Bag. April.

Reprisals. Reprisals and War. *J. Westlake.* Law Quar. Rev. April.

State Department. History of the State Department. III, *G. Hunt.* Am. Jr. of Int. Law. January.

Straits. La question des Détroits au XIX siecle. *H. Cambon.* An. de. Sci. Pol. March 15, 1909.

Treaties. Concerning the Interpretation of Treaties. *C. C. Hyde.* Am. Jr. of Int. Law. January.

Treaty-Making Power. The Extent of the Treaty-Making Power of the President and Senate of the United States. II. *W. E. Mikell.* Pa. L. Rev. and Am. L. Reg. May.

United States. Les États-Unis et le droit des gens. Quelques notes. *E. Nys.* Rev. de Droit Int. et Leg. Comp. 1909. No. 2.

United States Supreme Court. The American Hague Tribunal. *A. A. Bruce.* Yale L. Jr. April.

JURISPRUDENCE

Books

Binder, Julius. Die Plebs. Studien zur römische Rechtsgeschichte. Leipzig: Deichert. Pp. xix, 630.

Bozi. A. Die Schule der Jurisprudenz. Eine Einführung in die Elemente der Rechtswissenschaft auf Grund der induktiven Methode. Erster Leiferung. Hannover: Helwing.

Brunner, Heinrich. Geschichte der englischen Rechtsquellen im Grundriss. Leipzig: Duncker & Humblot. Pp. vi, 75.

Bryan J. W. The development of the English law of conspiracy. Baltimore: Johns Hopkins Press. Pp. 161.

Cremieu, Louis. La justice privée. Paris: Larose et Tenin. 1908. Pp. 324.

Digest of Justinian. Translated by C. H. Munro. Vol. 2. Cambridge: University Press. Pp. 453.

Fouillée, A. L'Idée moderne de droit. 6th ed. Paris: Hachette. Pp. iv, 412.

Friedberg, Emil. Lehrbruch des katholischen und evangelischen Kirchenrechts. 6 Aufl. Leipzig: Tauchnitz. Pp. xvi, 656.

Jaeger, Geo. Innere Beziehungen zwischen dem englischen Recht und der klassischen Nationalökonomie. Leipzig: Duncker and Humblot.

Kipp, Theodor. Geschichte der Quellen des römischen Rechts. 3. Aufl. Leipzig: Deichert, Pp. viii, 189.

Mitteis, L. Römisches Privatrecht bis auf die Zeit Diokletians. Vol. I. Leipzig: Duncker and Humblot. Pp. xviii, 428.

Partsch, J. Griechisches Bürgschaftsrecht. I. Teil. Das Recht des altgriechisches Gemeindestaats. Leipzig: Teubner. Pp. viii, 434.

Riccobono, S., Baviera, C., and *Ferrini, C.* Fontes juris romani antejustiniani in usum scholarum. Florence: Barbèra. Pp. xvii, 684.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Sägmüller, Johs. B. Lehrbuch des katholischen Kirchenrechts. 2d ed. Freiburg: Herder. Pp. xv, 931.

Sohm, Rudolf. Institutionen. Geschichte und System des römischen Privatrechts. 13th ed. Leipzig: Duncker und Humblot.

Wade-Evans. A. W. Welsh Medieval Law; being the text of the laws of Howell the Good. Oxford University Press. Pp. 96, 395.

Articles in Periodicals

Divorce. The Divorce Question in the United States. *C. LaR. Munson.* Yale L. Jr. April.

Legal Maxims. The Dignity of the Maxim. *W. T. Hughes.* Ill. L. Rev. June.

Roman Law. Genesis of Roman Law in America. *W. B. Munro.* Harvard Law Rev. June.

Sociology. Droit et sociologie. *M. Vauthier.* Rev. de Droit Int. et Leg. Comp. 1909. No 2.

Statute of Frauds. A New and Old Reading on the Fourth Section of the Statute of Frauds. *C. D. Hening.* Pa. L. Rev. and Am. L. Reg. June.

POLITICAL THEORY

Books

Croiset, A. Les democraties antiques. Paris: Flammarion. Pp. 343.

Wallas, Graham. Human nature in politics. Boston: Houghton, Mifflin. Pp. 16, 302.

Articles in Periodicals

Duguit. Duguit's Political Theory. *J. M. Mathews.* Pol. Sci. Quar. June.

MUNICIPAL ADMINISTRATION

Books

Bureau of Municipal Research. The park question. New York. 2 vols.

Cleveland, Frederick A Chapters on Municipal Administration and Accounting. New York: Longmans. Pp. 16, 361.

Jones, Sydney. The town councillor's handbook. London: Routledge. Pp. 124.

Most, Otto. Die Schuldenwirtschaft der deutschen Städte. Jena: Fischer. Pp. viii, 60.

Oesterreichisches Städtebuch, auf Grund der Berichte von grösseren österreichischen Städten. Vol. 12. Vienna: Hof- und Staatsdruckerei. 1908. Pp. ccv, 829.

Olshausen, H. Baupolizeigesetz der Stadt Hamburg. 2. Aufl. Hamburg: Meizsner. Pp. vii, 246.

Thomas, Beach. Our civic life. London: Alston Rivers.

Waltz, Karl. Das hessische Kommunalbeamtenrecht. Darmstadt: Bergstraesser. Pp. viii, 123.

Articles in Periodicals

Socialism. Municipal Socialism. *E. J. Levey.* Pol. Sci. Quar. March.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

MISCELLANEOUS

Books

Baldi, C. Elettorato ed eleggibilita. Torino: Bocca. Pp. 546.

Barker, J. Ellis. Modern Germany, her political and economic problems. 3d ed. London: Smith, Elder. Pp. 668.

Briand, A. La separation. Paris: Fasquelle.

Brocard, Ch. La démocratie socialiste allemande et autrichienne et les élections de 1907. Paris: Michalon.

Buxton, Charles R. Turkey in revolution. London: T. Fisher Unwin. Pp. 286.

Chapman, A. B. W. and *M. W.* The status of women under the English law. London: Routledge. Pp. vii, 84.

Clough, E. M. O. South African parliamentary manual. 1909 ed. London: Whittaker. Pp. xxxix, 154.

Denais, Joseph. La Turquie nouvelle et l'ancien régime. Paris: Rivière.

Dodd. W. F. The government of the District of Columbia. Washington: John Byrne. Pp. 298.

Fontaine, Jean. La représentation proportionnelle en Wurtemberg. Paris: Larose et Tenin. Pp. 221.

Fremantle, H. E. I. The new nation. A survey of the condition and prospects of South Africa. London: Ousley. Pp. 328.

Fry, William H. New Hampshire as a royal province. New York: Columbia University Press. 1908. Pp. 526.

Honotaux, G. Histoire de la France contemporaine. IV. La république parlementaire. Paris: Combet. Pp. viii, 783.

Harris, Percy A. New Zealand and its politics. London: Headley. Pp. 78.

Huszadik Szazad. La Hongrie contemporaine et le suffrage universel. Paris: Giard et Brière.

Hüttner, Rudolf. Das Recht der Kartelle in Deustchland. Eine juristische Studie. Leipzig: Rossberg'sche Verlagsbuchhandlung. Pp. vii, 147.

Jenks, Jeremiah Whipple. Principles of politics from the viewpoint of the American citizen. New York: Columbia University Press. Pp. 18, 187.

Knight, E. F. The awakening of Turkey. A history of the Turkish revolution. London: Milne. Pp. 368.

Levy, G. Après la guerre. Problèmes sud-africains. Paris: Libraire Universelle. Pp. vi, 285.

Leyret, H. La république et les politiciens. Paris: Fasquelle.

Long, C. R. The aim and method in history and civics. London: Macmillan.

McCormick, Frederick. The tragedy of Russia in Pacific Asia. London: Richards. 2 vols.

Mahaffy, R. P. Francis Joseph, his life and times: An essay in politics. London: Duckworth. 1908. Pp. 252.

Mailath, Joseph de. La Hongrie rurale, sociale et politique. Paris: F. Alcan. Pp. viii, 362.

Mater, André. La politique religieuse de la république française. Paris: Nourry.

Mischler, E. und *Ulrich, J.* Oesterreichisches Staatswörterbuch. Vienna: Hölder. 1904–09. 4 vols.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Naudeau, L. Le Japon moderne. Son évolution. Paris: Flammarion. Pp. 408.

Paine, Thomas. Life and writings. Edited by Daniel Edwin Wheeler. New York: Vincent, Parke and Company. 10 vols.

Ray, P. Orman. The repeal of the Missouri compromise: its origin and authorship. Cleveland: Arthur H. Clark.

Reinsch, Paul S. Readings on American federal government. Boston: Ginn and Company. Pp. 12, 850.

Rosegger, Hans Ludwig. Petitionen, Bitten und Beschwerden. Berlin: Vahlen. 1908, Pp. 218.

Saint-Maurice, Comte de. L'Empire Magyar. Paris: Roustan.

Schreiner, Olive. Closer Union. A letter on the South African union and the principles of government. London: Fifield. Pp. 61.

Schwarz, Otto George. Kirchenrecht, Völkerrecht. Ein Hilfsbuch für junge Juristen. 4. und 5. Aufl. Berlin: Heymann. Pp. xi, 231.

Seton-Watson, R. W. (Scotus Viator). Racial problems in Hungary. London: Constable. Pp. xxvii, 540.

Thorpe, Francis Newton. The statesmanship of Andrew Jackson as told in his writings and speeches. New York: The Tandy-Thomas Company. Pp. 538.

Valmor, J. La loi du nombre, notre principe du gouvernement. Paris: Rivière. Pp. 99.

Viallate, Achille. La vie politique dans les deux mondes. Deuxiéme année. Paris: F. Alcan. Pp. 636.

Articles in Periodicals

Agrarian laws. Les lois agraires anglaises de 1892 et de 1907. *R. R. Savary.* An. de. Sci. Pol. May 15.

China. La transformation de la Chine. *J. Rodes.* Ques. Dip. et Col. March 16.

China. La réforme de l'enseignement en Chine. *O. Ki-tseng.* An. de. Sci. Pol. May. 15

Corruption. Political Corruption. *R. C. Brooks.* Pol. Sci. Quar. March.

France. French Political Capacity. *J. T. Shotwell.* Pol. Sci. Quar. March.

Hungary La politique sociale en Hongrie. 1897–1908. *G. Louis -Jaray.* An. de. Sci. Pol. May 15.

Labor law. A Year of Bench Labor Law. *D. Y. Thomas.* Pol. Sci. Quar. March.

Legislation. Defective Methods of Legislation. *E. Bruncken.* Am. Pol. Sci. Rev. May.

Race Distinctions. Race Distinctions in American Law. *G. T. Stephenson.* Am. L. Rev. March–April.

Separation of Races. Separation of the Races in Public Conyevances. *G. T. Stephenson.* Am. Pol. Sci. Rev. May.

Taxation. Some Aspects of National Bank Taxation. *A. S. Bolles.* Pa. L. Rev. and Am. L. Reg. May.

Turkey. Le Comité ottoman "Union et Progrès." *C. Fidel.* Ques. Dip. et Col. April 1.

Turkey. Réflexions sur la crise turque. *H. Marchand.* Ques. Dip. et Col. May 1.

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ELECTRONIC REPRODUCTION PROHIBITED

Unemployment. Les Caisses de chômage et les subventions des pouvoirs publics in France. *A. de Lavergne* et *L. Paul Henry*. An. de .Sci. Pol. March 15.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

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UNITED STATES

Attorney-general, Annual report of the, 1908. iii, 356 pp. *Department of justice.* Cloth, 55c.

Conference of Governors, Proceedings of the, Washington, D. C., May 13–15, 1908. xxxvii., 451 pp., il. *President.* Cloth, 75c.

Constitution of the United States, Secret proceedings and debates of the Convention at Philadelphia, 1789, for the purpose of forming the, from notes taken by Robert Yates, etc. 1909. 208 pp. *Senate.* (S. doc. 728.)

Continental Congress, Journals of the. 1774–89. Vols. 13, 14. *Library of congress.* Cloth, $1.00 per volume.

Country life commission, Special message transmitting the report of the. 1909. 65 pp. *President.* (S. doc. 705.)

Cuba, Report of the Provisional governor of, Dec. 1907—Dec. 1908. viii, 121 pp. *War dept.* (H. Hoc. 1457).

Foreign relations of the United States, Papers relating to the, 1906. 2 vols.

Forest and other lands, Hearing on bills for the acquisition of, for the protection of watersheds and conservation of navagability of navigable streams. 1909. 143 pp. *House of reps. Committee on agriculture.*

Homes commission, Presidents. Reports on improvement of existing houses and elimination of insanitary and alley houses, on social betterment and on building regulations, with resolutions and recommendations. 1909. vii, 381 pp., plates. (S. doc. 644.)

Indian affairs, Report of the commissioner of, 1908. v, 190 pp., il. maps. *Office of Indian affairs.* Cloth, 60c.

Inland waterways commission, Preliminary report of the. 1908. vii, 701 pp., illus., maps. (60th Cong. 1st. sess., S. doc. 325.)

Labor laws of the United States with decisions of courts relating thereto. 22d annual report of the commission. 1908. 1562 pp. *Bureau of labor.* Cloth, $1.50.

Message of the President to Congress, 60th Congress, 2d session, with reports of departments and selections from accompanying papers, Abridgment, 1908. 2 vols. Cloth, v. 1, $1.00; v. 2, $1.10.

Philippine commission, Report of the, 1908. 2 vols. *War dept.* Cloth, pt. 1, 70c.; pt. 2, 90c.; app. 70c.

Porto Rico, Annual report of the Governor for 1908. 338, pl., maps. *Dept. of state.* Paper, 35c.

Rules of the house, with notes of practice thereunder, by Asher C. Hinds. 1909. iv., 207 pp. *House of representatives.*

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Senate Manual. Ed. of Feb. 15, 1909. 594 pp. (60th Cong., 2d sess., S. doc. 769.)

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Weekly rest-day, Reports from H. M. representatives abroad as to legislation in foreign countries respecting a. *Foreign office.* (cd. 4468.) 3d.

HONDURAS

Conferencia Centroamericana, Primera. Convencion. Actas de las sesiones. Informe. 1909. 81 pp. *Ministerio de relaciones exteriores.*

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ITALY

Emigrazione e colonie. Raccolta di rapporti dei RR. agenti diplomatici e consolari. v, 3, pte. 2, Argentina. 1908. 243 pp. *Ministro degli affari esteri.* 2 lire, Libreria Bocca, Rome.

VENEZUELA

El libro amarillo de los Estados Unidos de Venezuela presentado al Congreso nacional en sus sesiones de 1909 por el cuidadano Ministro de relaciones exteriores. xxxviii, 895 pp. *Ministerio de relaciones exteriores.*

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